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By Electronic Delivery

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: FINRA Regulatory Notice 10-54

Dear Ms. Asquith:

The American Council of Life Insurers ("ACLI") is a national trade association. Our 373 members account for 93 percent of the life insurance industry's total assets, 91 percent of life insurance premiums, and 95 percent of annuity considerations. We appreciate the opportunity to share our views on the subjects under review and consideration as part of the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 10-54 (the "Concept Proposal").

At the outset, we wish to note that we have substantial interest in the Concept Proposal. Our members offer and distribute life insurance, annuities and other products such as mutual funds, individual securities and 529 plans through affiliated and independent distributors, including broker-dealers ("BDs). Registered representatives ("RR" or "RRs") of BDs directly affiliated with life insurers represent a majority of the associated persons under FINRA's jurisdiction. Another type of insurer-affiliated broker dealer is strictly a "wholesaler" or "underwriter" distributing the insurance company's variable products through affiliated and unaffiliated broker dealers. This type of broker dealer does not engage in retail activities and does not maintain possession or control of customer funds or securities. Therefore, this type of broker dealer would not have dealings with customers in connection with the opening of accounts and should not be subject to the Concept Proposal.

Our letter discusses the unique nature of insurance product distribution and discusses some of the extensive rules to which such distribution and sales are currently subject, including significant disclosure rules. We comment on essential aspects the Concept Proposal for FINRA's consideration.

We hope that our comments will continue the constructive dialogue in which we have engaged with FINRA and other interested parties regarding Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and issues related to the distribution of

securities and investor protections for retail customers, including the disclosure issues raised by the Concept Proposal.

Summary of Position

- The insurance distribution and sales process is one of the most heavily regulated of the financial service industries in the marketplace today. Our letter summarizes this comprehensive regulatory framework. Any new requirements should be tailored to coordinate sensibly with this existing framework.
- To fulfill the objective of harmonizing BD and investment adviser (“IA”) patterns of regulation, any rulemaking by FINRA regarding a “document similar in purpose to Form ADV” for broker-dealers should be informed by the Securities and Exchange Commission’s (“SEC”) study required by Section 913 of the Dodd-Frank Act (the “Section 913 Study”), and should be coordinated with SEC rulemaking implementing its Section 913 Study.
- FINRA should carefully evaluate a number of significant coextensive regulatory initiatives governing parallel disclosure issues to avoid unnecessary duplications or conflicts.
- ACLI supports the provision of simple, clear and concise disclosures by BDs when providing personalized investment advice about securities to retail clients.
- FINRA should calculate the economic and competitive impact of the proposal so that its regulatory goals can be responsibly balanced.

I. The Unique Nature of Insurance Product Distribution.

A. The Operation and Activities of Insurance-affiliated BDs

Over 50% of FINRA's universe of RRs are associated with broker-dealers affiliated with life insurance companies. These BDs, however, are quite different from wire-house broker-dealers in structure, operation, products and services.

A common type of insurer-affiliated BD engages in retail securities activities primarily in the context of a larger insurance business. Many RRs associated with these BDs operate principally as life insurance and annuity salespersons. Securities sales can frequently constitute an incidental amount of business relative to non-securities insurance product sales by an office or RR. Another common type of insurer-affiliated BD offers only variable annuities and variable life insurance underwritten by the insurer. In some cases, the insurance-affiliated retail BD may sell a broader array of securities products, including mutual funds, 529 Plans and individual securities. Another type of insurer-affiliated BD is strictly a “wholesaler” - distributing the insurance company’s variable products through affiliated and unaffiliated selling BDs. This type of BD generally does not engage in retail activities and does not maintain possession or control of customer funds or securities. Therefore, this type of BD would not have dealings directly with retail clients. In other cases, the insurance-affiliated retail BD may only sell the proprietary variable products of the insurance company.

B. The Disclosure Framework Applying to Insurance Product Distribution

The ACLI supports providing BD clients with meaningful, concise disclosure about products, services, compensation and conflicts of interest so that they can make more informed choices.

So that BD clients do not receive duplicative or overlapping disclosure, FINRA should be mindful that life insurance companies and their associated persons currently comply with comprehensive patterns of regulation administered by state insurance departments, the SEC, the Department of Labor, as well as FINRA and various state securities divisions and departments.

The ACLI submission in response to the RAND Corporation Study of BD and IA activities (the “ACLI RAND Study Submission”) outlines in more detail the products, services and regulation of life insurance companies and their distributors, and has been recently updated for your reference.¹ ACLI’s RAND Study Submission addressed the following items:

- The NAIC Suitability in Annuity Transactions Model Regulation;
- FINRA Rule 2330 (previously, designated as NASD Rule 2821) Suitability and Supervision in the Sale of Variable Annuities;
- The NAIC Annuity Disclosure Model regulation;
- The NAIC Model Replacements Regulation;
- ACLI’s Disclosure Initiative for Fixed, Index, and Variable Annuities; and
- ACLI’s Summary Annuity Disclosure Templates and Instructions

II. Coextensive Regulatory Actions Merit Careful Consideration

Perhaps at no other time, have there been more simultaneous and complicated regulatory or legislative initiatives that would govern fees, services, conflicts and concomitant disclosure. While we visualize FINRA's objectives in developing a new broker-dealer and investment adviser disclosure requirement, it is important as a matter of timing and substance to recognize the multiple related proposals currently under consideration.

Until these substantively similar initiatives have crystallized, it is premature to advance FINRA’s initiative because all of the multiple proposals could impose a significant and expensive impact on systems, disclosure, and distribution arrangements. Multiple, sequential changes to these factors would invoke expensive operations overhauls. It would be constructive for FINRA to coordinate with the other regulators with coextensive or overlapping initiatives to eliminate burdensome conflicts or redundant, but different, practices.

It is sensible, therefore, to postpone any action on a FINRA’s disclosure project until the multiple interrelated actions have evolved. A brief summary of selected proposals highlights the complexity and interconnectedness of some of the initiatives, and their impact on repeated system rebuilds, disclosure, and distribution or service arrangements.

¹ The ACLI RAND Study submissions can be found with the ACLI’s [Comment Letter](#) to the SEC regarding Section 913. See Letter from Carl Wilkerson to Elizabeth Murphy, Secretary, SEC, Appendix A available at <http://sec.gov/comments/4-606/4606-2669.pdf>

A. SEC Standard of Care Study

As noted above, Section 913 of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act directed the SEC to conduct a Study Regarding Obligations of Brokers, Dealers, and Investment Advisers. The SEC Study² will evaluate the effectiveness of existing standards of care for brokers, dealers, investment advisers, and associated parties under state, federal or SRO laws for providing personalized investment advice and recommendations about securities to retail customers. Among other things, the study will evaluate whether it would better protect investors if broker-dealers and investment advisers fulfill a harmonized standard reflecting fiduciary duty and suitability concepts. ACLI provided detailed [input](#)³ on the SEC's [proposal](#),⁴ which could have a significant impact on broker-dealers and investment advisers distributing variable contracts. The Study follows years of administrative rulemaking on this issue and litigation about it.⁵

Given the significance of the SEC's Study and the potential changes to fees, disclosure and fiduciary duty that could reduplicate a FINRA disclosure project for broker-dealer and investment adviser, it would be prudent to postpone action on the initiative until the outcome of the SEC Study is crystallized. Importantly, there are a number of other recently adopted or proposed substantive regulatory initiatives that could also overlap the SEC's Study, as well as the FINRA disclosure inquiry. Some of these detailed regulatory actions are briefly summarized below to highlight this complex reticulum of interrelated actions.

B. SEC Initiative on Mutual Fund Distribution, Marketing and Service Fees

On July 21, 2010, the SEC invited comment on a proposal⁶ that would rescind Rule 12b-1 under the Investment Company Act of 1940, and replace it with a new framework for "marketing and service fees" and "ongoing sales charges." The proposal would also amend Rule 6c-10 under the investment Company Act to allow mutual funds the option of issuing shares at net asset value to broker-dealers, who could then establish and collect commissions or other sales charges to pay for distribution. The Rule 12b-1 initiative contains four basic elements:

- New "marketing and service fees" under proposed Rule 12b-2;
- New "ongoing sales charges" under amended Rule 6c-10;

² See Release No. 34-62577; IA-3058; File No. 4-606 (July 27, 2010).

³ See ACLI letter of Comment dated Aug. 30, 2010, in the SEC comment file at <http://sec.gov/comments/4-606/4606-2669.pdf> or on ACLI's website at <http://www.acli.com/ACLI/Issues/Members/Dodd-Frank+Implementation/CT10-119.htm?Issue=55> [ACLI offered recommendations about essential considerations in the SEC's Study, and outlined the industry's position on the harmonization of broker, dealer, and investment adviser regulatory structures. ACLI's submission explains insurance product distribution and the extensive regulatory network governing insurance product sales.]

⁴ See Release No. 34-62577; IA-3058; File No. 4-606 (July 27, 2010).

⁵ See, Wilkerson; *The Status of Broker-Dealers Engaged in Investment Advisory Functions: Muddy Waters Slowly Clearing*, ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (2007).

⁶ See Release Nos. 33-9128; 34-62544; IC-29367; File No. S7-15-10 (July 21, 2010) available at <http://sec.gov/rules/proposed/2010/33-9128.pdf>.

- New and revised disclosure requirements related to marketing and service fees and ongoing sales charges; and,
- A new option for “account level sales charges” where mutual funds issue shares at net asset value to broker-dealers, who establish and collect their own commissions and sales charges related to those shares.

The Rule 12b-1 proposal would require mutual funds to provide revised or additional prospectus disclosures concerning their use of marketing and service fees and ongoing sales charges. The proposal would also require broker-dealers to provide enhanced disclosures on transaction confirmations concerning the imposition of marketing and service fees, ongoing sales charges, and other charges. This reverses prior SEC guidance, which permits broker-dealers to exclude from confirmations information about mutual fund sales charges if the investor received a prospectus containing that information. Under the proposal, broker-dealers would be required to provide the following categories of information in their confirmation statements:

- The amount of any-front and sales charge in percentage in dollar terms, together with the net dollar amount invested and any applicable breakpoints;
- The maximum amount of any deferred sales charge, as a percentage of net asset value at time of purchase or redemption;
- The annual amount of any marketing and service fees or ongoing sales charges and the aggregate amount of ongoing sales charges that may be incurred over time, both expressed as a percentage of net asset value, and the maximum number of months or years that the investors will pay ongoing sales charges;
- A statement to the effect that the investor will indirectly pay other-asset based fees charged by the mutual fund, such as management fees in addition to any marketing and service fees or ongoing sales charges; and,
- For redemptions, the amount of any deferred sales charge incurred or to be incurred, expressed in dollars and as a percentage of net asset value.

ACLI submitted a [letter of comment](#)⁷ on the SEC’s initiative. As of December 20, 2010, the SEC had not published notice of further action on the rulemaking package, although it is not anticipated to occur before mid-2011 at the earliest, with an additional period for implementation. Many elements of the SEC’s Rule 12b-1 initiative have overlaps with the substance of information that could occur in the FINRA disclosure concept release

⁷ <http://sec.gov/comments/s7-15-10/s71510-1114.pdf>

C. Department of Labor Actions

1. The Department of Labor (“DOL”) recently published a proposal to greatly expand the definition of “fiduciary”⁸ under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), for those who provide investment advice for a fee. The proposed regulations would:

- Broaden the range of entities subject to ERISA’s strict fiduciary framework. The DOL believes this change would discourage consultants from being influenced by “inappropriate fee arrangements.”
- Expand the definition of “investment advice” to include appraisal services. This change is meant to primarily address abuses in the area of employee stock ownership plans by aligning the interests of an appraiser with those of the plan.

The DOL explains that the proposed changes would better address conflicts of interest and fee arrangements resulting from changes in the investment climate since ERISA was enacted, including the growth of 401(k) plans and the complex investment opportunities available to defined benefit plans.⁹ This action could directly impact providers of VA and VLI separate accounts used to fund ERISA covered plans. The DOL proposal could intersect or overlap with the SEC’s Study as well as FINRA’s several fiduciary duty initiatives.

These various administrative actions provide sufficient reasons for a postponement of any FINRA disclosure actions until the aggregate impact on systems changes, fees and disclosure can be reasonably ascertained. Without coordination and postponement, there may be overlapping or conflicting standards, and inefficient use of resources in designing systems, disclosure and procedures.

2. On October 20, 2010, the DOL published final [regulations](#)¹⁰ regarding plan fee disclosures to participants, which requires the disclosure of certain plan and investment-related information, including fee and expense information, to participants and beneficiaries in participant-directed individual account plans, such as 401(k) plans. This regulation is intended to ensure that all participants and beneficiaries in participant-directed individual account plans have the information they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings. The new rule will be effective for plan years beginning on or after November 1, 2011.

⁸ Under ERISA, a “fiduciary” includes an adviser who renders investment advice for a fee or other compensation, or has the authority or responsibility to do so. Longstanding DOL regulations provide that for an adviser who does not have any discretionary authority within a plan to be considered an ERISA fiduciary, the advice provided must serve as a primary basis for investment decisions and be provided on a regular basis.

⁹ These elements may be difficult to establish in many common fact patterns and do not cover a variety of circumstances that the DOL believes may include fiduciary functions such as where consultants advise on investment-related matters, including a plan’s investment in complex investment products.

¹⁰ 75 Fed. Reg.202 (October 20, 2010) 64910, <http://edocket.access.gpo.gov/2010/pdf/2010-25725.pdf>

Among other things, the rule requires, if applicable, an explanation that, in addition to the fees and expenses disclosed pursuant to other provisions of the rule, some of the plan's administrative expenses for the preceding quarter were "paid from the total annual operating expenses of one or more of the plan's designated investment alternatives (e.g., through revenue sharing arrangements, Rule 12b-1 fees, sub-transfer agent fees)."¹¹ This new requirement is intended to provide those participants in plans with revenue sharing arrangements that serve to reduce plan administrative costs with a better picture about how those costs are underwritten, at least in part, by fees and expenses associated with investment alternatives offered under their plans.¹²

3. On July 16, 2010, the DOL published "interim" final regulations¹³ imposing new disclosure and related requirements under ERISA for certain service providers to retirement plans. Under ERISA, any person providing services to a retirement plan or its participants is a "party in interest" to the plan by reason of providing those services. ERISA Section 406(a), in turn, generally prohibits a party in interest from providing services to the plan, while Section 408 (b)(2) permits a party in interest to provide necessary services to the retirement plan, under a series of strong conditions.

The new DOL Rule 408(b)(2) imposes detailed compensation disclosure obligations on certain enumerated types of service providers, termed "covered service providers," that reasonably expect to receive \$1000 or more in compensation from providing services to a covered plan. Rule 408(b)(2) provides for three broad categories of covered service providers, including ERISA fiduciaries and registered investment advisers, certain record keepers and brokers that make available investment options in connection with such recordkeeping and brokerage services to individual account plans, and service providers receiving indirect compensation.

Significantly, Rule 408(b)(2) requires detailed disclosure of indirect compensation, which is broadly defined and includes, among other things, compensation that is charged directly against the plan's investment and reflected in the net value of the investments, such as 12b-1 fees.¹⁴ Service providers that make investment options available must also disclose compensation information about the investments for which it provides services, including: all sales loads, redemption fees and other compensation that will be charged directly against the plan's investments in connection with the acquisition or withdrawal of interest from the investment vehicle, the annual operating expenses of the investment vehicle, and any other ongoing expenses associated with the investment vehicle.

¹¹ *Id.*

¹² *Id.* at 64913.

¹³ 75 Fed Reg. 135 (July 21, 2010) at 41600.

¹⁴ Under the new rules,

"the covered service provider must separately disclose such compensation if it is set on a transaction basis (e.g., commissions, soft dollars, finder's fees or other similar incentive compensation based on business placed or retained) or is charged directly against the covered plan's investment and reflected in the net value of the investment (e.g., Rule 12b-1 fees). The final rule also requires the covered service provider to identify the services for which such compensation will be paid, the payers and recipients of such compensation, and the status of each payer or recipient as an affiliate or a subcontractor." [emphasis added] *Id.* at 41609.

Rule 408(b)(2) disclosure must be provided before a new investment option is added to a plan, and regarding existing arrangements, disclosure must be provided by the July 16, 2011, effective date of the rule.

To satisfy these standards, a number of detailed compliance chores must be completed. Retirement plans and service providers must survey and identify arrangements that may be subject to Rule 408(b)(2) and develop compliant disclosure. Service providers must develop systems to identify and capture all the compensation required to be disclosed. Many service providers will also need to build an internal training program around these requirements and procedures necessary for compliance. Plan fiduciaries and sponsors will need to develop procedures for evaluating the information circulated by service providers. Collectively, these developments are formidable.

With so many moving and interrelated regulatory parts, it makes sense to allow the different new rules and proposals to further crystallize before FINRA moves forward on its broker-dealer and investment adviser disclosure concept. It would be worthwhile for FINRA to coordinate to make sure the two regulatory initiatives do not conflict or duplicate, before any FINRA initiative advances. Variable contract separate accounts serve as funding vehicles for ERISA covered plans, and individual retirement accounts and would also face these new DOL standards, which could also impact distributors of these contracts.

D. SEC Point-of-Sale and Confirmation Proposal.

Another related, pending initiative includes the SEC's proposed point-of-sale and confirmation initiative¹⁵ that would require broker-dealers to provide customers with targeted information about costs and conflicts of interest in the sale of mutual funds, college savings plans, and variable insurance products. The release specifically invited comment on the appropriateness of written point-of-sale disclosure for variable annuities and variable life insurance.

The ACLI submitted [comments](#)¹⁶ on the proposal, noting that variable life insurance and variable annuity prospectuses promote informed purchase decisions and critical comparison shopping, including comparison of cost features. The SEC upgraded prospectus requirements for variable life insurance and variable annuities that provide plain-English disclosure and cost information in a clear fee table.¹⁷

¹⁵ See Release No. 33-8544; 70 Fed. Reg. 42 (March 4, 2005). On January 29, 2004, the SEC initially proposed two new rules and rule amendments under the Securities Exchange Act of 1934 designed to enhance the information broker-dealers provide customers purchasing variable contracts, mutual funds, and college savings plans. The initiative elicited over 5,000 letters of comment. On March 24, 2005, the SEC reopened the comment period and invited supplemental input on a new "point-of-sale" document. The proposal would require "targeted information" at the point-of-sale about fees, charges, and broker-dealer conflicts of interest. The initiative also proposed amendments to the post-sale confirmation statements required under the federal securities laws.

¹⁶ See <http://sec.gov/rules/proposed/s71004/cbwilkerson040405.pdf> .

¹⁷ Insurance and annuity purchasers have access to multiple sources of detailed information. In addition to the point-of-sale document, consumers also receive a prospectus, a variable contract, buyers' guides, NASD-approved sales literature, and replacement disclosure forms when a replacement is involved. Variable contracts are the only financial products in today's securities marketplace with free-look provisions. These features give consumers a meaningful opportunity to carefully evaluate purchases after the sale, and to change their mind for any reason, including cost factors.

According to the most recently published Unified Agenda and Regulatory Plan, the point-of sale proposal is still pending.¹⁸ The FINRA disclosure concept should not be advanced while the SEC point-of-sale initiative is still pending. Coordination and clarification is incumbent on the administrative process.

E. FINRA Variable Annuity Suitability and Supervision Rule

In 2008, the SEC approved new FINRA Rule 2330¹⁹ governing suitability and supervision in the sale of variable contracts. Among other things, the rule requires broker-dealers to deliver meaningful succinct disclosure at the point-of-sale so that consumers can make informed purchase decisions about the individual variable annuity, notwithstanding the extensive disclosure in the VA prospectus, which may be delivered after the purchase decision, and is generally subject to free-look provisions under state insurance laws. Broker-dealers, or the issuers for whom they distribute, must generate this new point-of-sale disclosure. In an effort to promote meaningful summary disclosure on a uniform basis, the ACLI developed voluntary VA disclosure templates.²⁰ ACLI's VA disclosure templates summarize the impact of fees, charges, and compensation.²¹ We have shared this work with FINRA and the SEC throughout this process. FINRA staff has expressed support for the ACLI disclosure templates.

2002 amendments to the variable annuity fee table in Form N-4 require information about all recurring fees and charges. The revisions also require a narrative that explains the purpose of the fee table and relevant cross-references to the prospectus. The changes require specific explanatory narratives preceding each section of the fee table "to help investors better understand the information about fees and charges in that section."

The SEC staff identifies the fee table as the "current lynchpin of cost disclosure." The fee table is a core feature of the SEC's prospectus simplification project that sought to replace "unintelligible, tedious, and legalistic" disclosure with meaningful information on which to make an informed purchase decision. See Arthur Levitt, *Plain English in Prospectuses*, New York State Bar Journal (Nov. 1997) at 36. Parallel fee, charge and expense provisions appear in Form N-6, which sets forth registration and prospectus requirements for variable life insurance separate accounts organized as unit investment trusts. VLI prospectus materials effectively and efficiently convey comparative expense, fee and cost information in a uniform and accurate fashion.

Prospectus illustrations, personalized illustrations, and underlying fund performance are three linked features that give consumers additional tools to evaluate a variable life contract and to make an "apples-to-apples" comparison among different variable life contracts, including the impact of charges on the contract and distribution fees.

¹⁸ See the SEC's Spring 2010 Unified Agenda and Regulatory [Plan](http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201004&RIN=3235-AJ12) for short term and long term rulemaking at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201004&RIN=3235-AJ12>.

¹⁹ FINRA Rule 2330 is explained in detail in Wilkerson, *FINRA Rule 2821: Suitability and Supervision in the Sale of Variable Annuities*, ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (2008).

²⁰ ACLI's Annuity Disclosure Templates are explained in greater detail in Wilkerson, *ACLI Disclosure Initiative for Fixed, Index, and Variable Annuities: Constructive Change on the Horizon*; ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (2007).

²¹ ACLI's Variable Annuity Disclosure Template is attached as Appendix A, with fee and charge disclosure, including 12b-1 fees, highlighted.

It would be inapposite for FINRA to create another broker-dealer disclosure requirement without thoroughly evaluating the potential conflicts and duplications of disclosure required under Rule 2330 in variable annuity sales. Further, many state insurance departments have supported and encouraged the parallel companion series of ACLI disclosure templates for fixed and index annuities. This new rule and the industry's disclosure solutions present a further regulatory development that overlaps aspects of FINRA's initiative that are import to holistically acknowledge.

III. ACLI Supports Simple and Clear Disclosures to Retail Investors Pursuant to Section 913 of the Dodd-Frank Act

As we noted in our comment letter on the SEC's study required by Section 913 of the Dodd-Frank Act (Section 913 Study), ACLI supports the provision of simple, clear and concise disclosures by BDs when providing personalized investment advice about securities to retail clients.²²

Once the SEC concludes the Section 913 Study, it may exercise rulemaking authority granted to it under the Dodd-Frank Act. Specifically, Section 913 of the Dodd-Frank Act provides the SEC rulemaking authority to "address the legal standards of care for brokers, dealers and investment advisers" and further to establish a standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers, and to disclose material conflicts of interest to such customers. Section 913 also specifically requires the SEC to "facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers and investment advisers, including any material conflicts of interest."

The Concept Proposal notes in relevant part that "in anticipation of satisfying any resultant rulemaking mandates" related to Section 913 of the Dodd-Frank Act, FINRA staff is seeking comments related to potential new BD disclosure requirements. As noted above, similar disclosure requirements may be facilitated by the SEC after completion of the Section 913 Study. Given that the Section 913 Study is expected to be completed by January 21, 2011, ACLI believes that FINRA should not put forth a formal rule proposal related to any new BD disclosure requirements until the Section 913 Study is completed and rules are implemented.

Because the Section 913 Study seeks to facilitate "simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers and investment advisers, including any material conflicts of interest," FINRA should consider the Section 913 Study's findings when and if it promulgates any rulemaking pertaining to BD disclosures. A troubling potential for overlapping and duplicative rulemaking proposals related to BD disclosures will occur unless the Section 913 Study findings are assessed prior to any formal rule proposals related to any new BD disclosures to retail customers. Moreover, there are a number of coextensive regulatory initiatives that cover similar disclosure matters.

Nonetheless, we are providing below certain broad principles related to disclosures in response to the Concept Proposal, and the Concept Proposal's request for comment. We anticipate providing

²² See Letter from Carl Wilkerson to Elizabeth Murphy, Secretary, SEC (Aug. 30, 2010), available at <http://www.sec.gov/comments/4-606/4606-2669.pdf>

more detailed comments related to BD disclosures to retail customers after we have had a chance to review and consider the Section 913 Study results and any related SEC and/or FINRA rulemaking proposals. We look forward to working with FINRA as it considers the issues in the Concept Proposal.

IV. FINRA's Action Regarding BD Disclosures to Retail Customers²³

When providing personalized investment advice about securities to retail customers, BD's should be required to make balanced and fair disclosure of material facts relevant to the retail customer's investment decision, including material conflicts of interest. The Dodd-Frank Act defines "retail customer" as a natural person (or the legal representative of such natural person) who receives personalized investment advice from a BD or IA and who uses such advice primarily for personal, family, or household purposes. We believe that this definition is tailored to provide protection to true retail clients without unnecessarily imposing obligations with respect to customers who have different needs or where the relationship is subject to other regulatory regimes.

We urge FINRA to conform to the Dodd-Frank Act's definition of retail customer in order to be consistent with any rulemaking likely to be engaged in by the SEC following the Section 913 Study. To the extent that FINRA is considering rules that would define retail customer more broadly, such as by reference to NASD Rule 3110(c)(4)'s definition of "institutional account," such a broadening of the definition of retail customer is likely to lead to confusion and inconsistency, without furthering the laudable goals that FINRA has expressed in the Concept Proposal.

Additionally, we would urge that the definition of "retail customer" used in any FINRA rules make clear that the term does not encompass employer-sponsored retirement plans, including defined contribution pension plans such as 401(k) and 403(b) plans, and their individual participants. As noted above, providers to such plans are already subject to extensive disclosure requirements to plan sponsors and plan participants that have been imposed by the Department of Labor, and the imposition of additional, or perhaps conflicting, requirements would not further the worthwhile objectives that FINRA has expressed in the Concept Proposal.²⁴

The following factors should govern the types of disclosures BDs may be required to provide retail customers in connection with the provision of personalized investment advice about securities:

- **Simple, Clear and Concise Disclosure.** Retail customers should receive clear disclosure of the range of securities products and services that are offered to them by the BD and their associated persons. Such disclosures should include a narrative description of the types of fees and costs associated with the securities offerings and the manner in which the BD and its associated person are compensated.

²³ In some respects, the FINRA disclosure proposal would establish a new disclosure requirement for broker-dealers and investment advisers. While we visualize FINRA's general objectives, FINRA currently lacks authority to regulate investment advisers, including the imposition of disclosure standards. Until Congress revises the Investment Advisers Act of 1940 to require investment advisers to belong to a self-regulatory organization, such as FINRA, or the SEC delegates ministerial oversight of investment advisers to FINRA, the proposed rule has no relevant applicability to investment advisers. Our comments, therefore, evaluate the rule concerning its application to broker-dealers. If Congress or the SEC revised the regulatory authority of FINRA to govern investment advisers, then our comments concerning broker-dealers in this letter would also apply to investment advisers.

²⁴ In the ACLI's Comment Letter to the SEC regarding Section 913, ACLI urged the SEC to defer to the Department of Labor's extensive guidance addressing investor education and regulations governing advice, which impose fiduciary duties consistent with ERISA, in order to avoid imposition of conflicting fiduciary duty schemes in the pension plan context.

- **Plain English.** Disclosure should be written in plain-English, and the SEC, FINRA and other regulators should work with the industry and others to identify ways to simplify, and make disclosures more helpful to retail customers.
- **Layered Disclosure.** It would be constructive and useful for retail customers to obtain shorter summary disclosures at or before the sale of securities products and services with companion guidance that additional information is available through a firm's website or through hard copy upon request. Summary disclosures make it more likely that retail clients will read and understand information disclosed.
- **Use of Firm Websites.** We encourage FINRA to consider approaches that enable BDs to be able to provide concise and helpful written disclosures to retail customers, and then reference links to their websites for certain types of additional, detailed information. Such disclosures should also refer retail customers seeking more detailed disclosure to the BD's website.²⁵ This position comports with recent SEC positions, such as in the release adopting amendments to the Form ADV Part 2.²⁶ The SEC stated in the adopting release that it "will continue to consider different approaches to delivering financial information to investors."²⁷
- **Disclosure of Material Conflicts of Interest.** Perceived or actual conflicts of interest between the BD and their retail customers can arise regardless of the business model. BDs should take appropriate steps to identify material conflicts and disclose these conflicts to their retail customers.
- **Disclosure of Compensation.** Retail customers should receive a brief narrative description about associated person compensation in the sale of securities products and services, so the retail customer can evaluate the personalized investment advice about securities received in light of any conflict of interest to evaluate the value of securities products and services and related benefits. Retail customers will find most useful concise information regarding how associated persons are compensated and by whom for various products and services, rather than the exact amounts of compensation, in order to determine whether compensation incentives may lead to a conflict of interest.

²⁵ We urge that consideration of any additional disclosure requirements would include a thorough analysis of the disclosures that retail customers currently receive. For example, when purchasing a deferred variable annuity, a retail (and other) customer must be informed of the general terms of various features of deferred variable annuities, such as surrender period and surrender charges; potential tax penalties; mortality and expense charges; investment advisory fees; potential charges for and features of riders; the insurance and investment components; and market risk. Additionally, such retail (and other) customers must be provided with a product prospectus, which provides a comprehensive and detailed description of the variable annuity. Finally, such retail (and other) customers are provided prospectuses for the mutual funds underlying the product subaccounts in which they invest. Simply piling more disclosure on top of the above-noted disclosure information is more likely to result in "information overload" than an enhanced understanding of the product or transaction by retail customers.

²⁶ Amendments to Form ADV, Investment Advisers Act Release No. IA-3060 (July 28, 2010), <http://www.sec.gov/rules/final/2010/ia-3060.pdf> .

²⁷ *Id.*

V. FINRA Should Quantify and Justify the Burden to be Imposed by Any New Regulation

When FINRA does eventually make rules as a result of the information it gathers from this Concept Release, FINRA's rulemaking should contain a competitive and economic impact statement, and should quantify the burdens on broker-dealers, affiliates or third party service providers. Any new rulemaking should assess the aggregate costs of compliance so that the SEC can properly execute its statutory duties to screen SRO initiatives for anticompetitive effect.²⁸

VI. Conclusion

We greatly appreciate your consideration of and attention to our views. If any questions develop, please let me know. We look forward to a continuing dialog about FINRA and SEC actions to enhance disclosure to retail investors and any related rulemaking.

Sincerely,



Carl B. Wilkerson



David M. Leifer

²⁸ See, Smythe, *Government Supervised Self-Regulation in the Securities Industry and the Antitrust Laws: Suggestions for an Accommodation*, 62 N.C. L. Rev. 475 (1984) at 504 [the SEC has an obligation in reviewing SRO conduct to "weigh the competitive impact in reaching regulatory conclusions"]. See also Linden, *A Reconciliation of Antitrust Law with Securities Regulation: the Judicial Approach*, 45 Geo. Wash. L. Rev (1977); Johnson, *Application of Antitrust Laws to the Securities Industry*, 20 SW. L.J. (1966); Note, *The Application of Antitrust Laws to the Securities Industry*, 10 WM. & Mary L. Rev. (1968).

APPENDIX “A” Appears on the immediately following pages.

VARIABLE ANNUITY DISCLOSURE MATERIALS

*How to Complete the Template
for a Variable Annuity Disclosure*

*Example 3A: Template for a
Variable Annuity Disclosure*

*Example 3B: Sample of a
Variable Annuity Disclosure*

HOW TO COMPLETE THE TEMPLATE FOR A VARIABLE ANNUITY DISCLOSURE

The following is a guide to writing a disclosure for an variable annuity. It includes guidance for writing statements; the types of information that should be covered under each required section, the headings to be used and questions to be answered; and in some cases, provides suggested language that can be used. **Disclosure documents must be prepared consistently with FINRA conduct rule 2210 (Communications to the Public).**

Example 3A on page 29 shows a graphic of a variable annuity disclosure template; Example 3B on pages 30–31 is an example of what an actual product disclosure may look like; Addendum X shows the disclosure document to scale. Companies are encouraged to follow the language used in the sample.

Note: The variable annuity disclosure document may be presented in two forms: print or electronic. If distributed electronically, in addition to providing direct links to the annuity prospectus or supplement material for more information, companies also should keep references to specific pages (and, if appropriate, headings on that page) in the event consumers prefer to print hard copies.

Guide to Writing Disclosure Statements

- Make a clear distinction about whether a statement is true of all annuities (“an annuity”) or all annuities of this type (“a deferred annuity”) or this product (“this annuity,” “this deferred annuity”).
- In a question, refer to the reader as I (my annuity). In the answer, refer to the reader as you (your annuity). Refer to the company as “we” or use the name of the insurance company. Don’t use the generic “insurer” or “company.”
- Avoid statements that don’t give specific information or don’t give the reader information to find specific information. For example, “Interest is credited to your account” is a general statement that isn’t very useful. “Interest is credited to your account daily” is a specific statement of information as is “Page 23 of your annuity prospectus explains the different ways that interest may be credited to your account.”
- Use specific terms (i.e. surrender) from your annuity prospectus in the disclosure but include a definition in parentheses after.
- Put important terms in bold font the first time you use them. Be selective about what terms you consider important. If too many words are in bold, the technique loses its effectiveness.
- If you refer the reader to the annuity prospectus for more information be specific about what information is there and exactly where to find it (e.g. use page numbers or section titles).
- The phrasing “includes” (“Your options include”) suggest there are other options not stated here. If you’ve stated all of the options, say “Your options are.” If you plan to add options later, say, “Your options now are.”
- Use “annuity prospectus” when you’re referring the consumer to the written prospectus.
- Don’t use the word policy to refer to an annuity.
- When possible, present information in a bulleted list with a brief description and refer to a specific page number in the annuity prospectus for more information.

SECTION 1: INTRODUCTION

- Include your company name and name of the product at the top of the page. A company logo also may be inserted.
- Include statements that briefly explain each of the major features of the annuity. (Suggested language: This annuity is deferred, which means payouts begin at a future date.)
- Specify that this is a variable annuity and include a definition. (Suggested language: This is a variable annuity: the return on your investments will vary with changes in the market OR its value depends on the performance of the investments you chose.)
- Include a statement that the buyer can use an annuity for lifetime income but it is not meant for short-term goals. (Suggested language: You can use an annuity to save money for retirement and to receive retirement income for life. It is not meant to be used to meet short-term financial goals.)
- Specify if the annuity is single-premium or flexible premium. (Suggested language: This annuity is single-premium which means you buy it with one payment (premium) **or** flexible premium which means you can purchase it with multiple payments (premiums)).
- Include information about how the annuity accumulates earnings. For example: This annuity can accumulate earnings in two ways: 1) from various investment choices we offer and 2) from a fixed interest account of XYZ Life Insurance Company.

SECTION 2: THE ANNUITY CONTRACT

What are my investment options?

- Explain how the annuity accumulates earnings, clearly distinguishing between guaranteed, non-guaranteed, and determinable elements, including their limitations.
- List how many investment choices are currently available, explain the choices the consumer must make, and refer to the specific pages of the annuity prospectus where detailed information is available. (If the disclosure is online, this section may provide a link to more information about investment choices.)

SECTION 3: BENEFITS

What are the benefits of my annuity?

- List and describe the benefits of the annuity and include links, page numbers, or section headings for more information.

Guide to writing statements in this section:

- Use the term premium to refer to money the consumer pays you. Use the term payout to refer to money you pay the consumer.
- Use the same terms that are used in the annuity prospectus for payout options, but include a clear explanation of each.
- If the annuity prospectus uses another term for payout, the first time it appears put the other term in the disclosure followed by payout in parenthesis. After the first time, use the generic term payout.
- When you use a table, explain the table. An example using information from the table is a good way to explain the table.
- Be specific when you refer to the annuity prospectus; include links, page numbers and, if appropriate, headings on that page.

How do I get income (payouts) from my annuity?

- Mention the various payout options and provide a link to the annuity prospectus, page numbers, or section headings where more information is available.
- Explain what happens if the annuitant doesn't choose a payout option.

SECTION 4: OPTIONAL BENEFIT RIDERS AND THEIR FEES

What other benefits can I choose?

- List **all** optional riders, briefly describe each, and include either the range of fees or the maximum fee charged for each option. Include links, page numbers, or section headings and refer to specific

.....

page numbers or section headings in the annuity prospectus and supplement material for more information.

Guide to writing statements in this section:

- Present information in a chart or table.
- Be specific when you refer to the annuity prospectus; include links, page numbers and, if appropriate, section headings on that page.
- Use the same terms used in the annuity prospectus for riders, but include a brief explanation of what the rider offers.

SECTION 5: RISKS

What are the risks?

In this section, describe the types of risks in a bulleted list with a brief description of each. If online, include a link to the relevant information. Also include specific page numbers in the annuity prospectus for more detailed information. This section should describe:

- Risks to guaranteed elements.
- Risks associated with underlying investments.
- Options and restrictions on withdrawing money from the annuity.
- Tax consequences for early withdrawals.

Guide to writing statements in this section:

- Use the terms used in the annuity prospectus for risks, but include a brief explanation of what each risk is.
- Be specific when you refer to the annuity prospectus; include links, page numbers and, if appropriate, headings on that page.

SECTION 6: FEES, EXPENSES AND OTHER CHARGES

What happens if I take out some or all of the money from my annuity?

This section should outline:

- The amount of surrender charges and when they are paid.
- If the variable annuity contract is designed without surrender charges, the question should be answered to indicate that no surrender charges apply under the contract provisions for surrenders.
- Any other charges or adjustments in the amount received when taking money from an annuity.

Guide to writing statements in this section:

- If the annuity prospectus uses another term for surrender charge, the first time it appears in the disclosure, put the other term followed by surrender charge in parentheses. After the first time, use the generic term surrender charge. (Example: XYZ Life Insurance Company takes a contingent deferred sales charge (also known as a surrender charge) ...).
- State surrender charges in a table format and include an example to explain the table.
- Be specific when you refer to the annuity prospectus; include links, page numbers and, if appropriate, headings on that page.

What fees or charges do you take from my annuity account value?

- List and describe contract fees, such as annual contract fees and annual portfolio expenses. You may list the range of each fee or the maximum fee charged for each.

Do I pay any other fees or charges?

- List and describe any other fees or charges that apply, such as annual service charges, maintenance charges or transfer fees, and disclose amounts. Include links, page numbers, or section headings in the annuity prospectus for more information.

Guide to writing statements in this section:

- A table may be useful to explain fees and charges. If you use a table, include an example to explain the table.

SECTION 7: TAXES

How will payouts and withdrawals from my annuity be taxed?

This section should outline:

- The meaning of tax-deferred (Suggested language: Variable annuities are tax-deferred which means you don't pay taxes on accumulated earnings until the money is paid to you. When you take payouts or make a withdrawal, you pay ordinary income taxes on the accumulated earnings. You also defer paying taxes on earnings if you move money from one investment option in your annuity to another. You may pay a 10% federal income tax penalty on earnings you withdraw before age 59 1/2.)
- If your company takes premium taxes from withdrawals or payouts, include a statement describing the deduction. (Suggested language: If your state imposes a premium tax, it will be deducted from the money you receive.)
- That one tax-deferred annuity can be exchanged for another without paying taxes on accumulated earnings. (Suggested language: You can exchange one tax-deferred annuity for another without paying taxes on the accumulated earnings when you make the exchange. Before you do, compare the benefits, features, and costs of the two annuities.)

Does buying an annuity in a retirement plan provide extra tax benefits?

- Explain that there are no additional tax advantages to buying an annuity in an IRA, 401 (k) plan or other tax deferred retirement product. (Suggested language: Buying an annuity within an IRA, 401(k), or other tax-deferred retirement plan doesn't give you any extra tax benefits. Choose your annuity based on its other features and benefits as well as its risks and costs, not its tax benefits.)

SECTION 8: OTHER INFORMATION

What else do I need to know?

All disclosures should include the following statements, modified as needed to match your situation.

Changes to your contract

We may change your annuity contract from time to time to follow federal or state laws and regulations. If this happens, we'll tell you about the changes in writing.

Compensation

We pay the salesperson and the firm he or she is associated with for selling this annuity to you. The compensation they receive could create a conflict of interest by influencing them to recommend one product over another. Ask your salesperson for more information.

Free look

Many states have laws that give you a set number of days to look at an annuity after you buy it. If you decide during that time that you don't want it, you can return the annuity and get all your money back. Read your contract [Insert link, page number or section title] or the annuity prospectus [Insert link, page number or section title] to learn about your free look period. (Or replace suggested language with state and company specific information about free look.)

Include in this section other important information that doesn't appear elsewhere.

What should I know about the insurance company?

Include in this section a general description of the company as well as all contact information, including an address, phone number, Web site, and e-mail address (as applicable). You also may consider including financial strength ratings.

All disclosures should include the following statement, modified as needed to match your situation:

- Note: The about information is current as of the annuity prospectus dated____. This is a summary document. The prospectus contains important information required under the federal securities laws. If you wish to receive a paper copy of the prospectus and supplement material, click here or call 800-123-4567. There is no charge for paper copies.

Template for a Variable Annuity Disclosure

Example 3A shows how to group disclosure material into sections and in two-column format. Disclosure documents should be kept short. The template also includes the section headings that are to be used, the questions that need to be answered, and provides direction. Refer to the accompanying instructions for more information about how to complete the template and for suggested language. Disclosure documents must be prepared consistently with FINRA conduct rule 2210 (Communications to the Public).

Note: The variable annuity disclosure document may be presented in two forms: print or electronic. If distributed electronically, in addition to providing links to the prospectus, keep references to specific pages in case consumers choose to print hard copies.

SECTION 1

[COMPANY NAME]

[PRODUCT NAME] Disclosure

[STATE COMPANY NAME AND NAME OF PRODUCT. SPECIFY IF THE ANNUITY IS A SINGLE- OR FLEXIBLE- PREMIUM. INCLUDE STATEMENTS THAT BRIEFLY EXPLAIN MAJOR FEATURES AND HOW THE ANNUITY ACCUMULATES EARNINGS. DISCLOSE THAT THE ANNUITY IS NOT MEANT TO BE USED TO MEET SHORT-TERM GOALS. SUGGESTED LANGUAGE PROVIDED IN THE ACCOMPANYING INSTRUCTIONS.]

SECTION 2

THE ANNUITY CONTRACT

What are my investment options?

[EXPLAIN THE CHOICES THE CONTRACT OWNER MUST MAKE, INCLUDING HOW MANY INVESTMENT OPTIONS ARE AVAILABLE AND THEIR VARYING DEGREES OF RISK AND THE CURRENT RATE OF THE FIXED ACCOUNT.]

BENEFITS

What are the benefits of my annuity?

[LIST AND DESCRIBE THE ANNUITY'S BENEFITS.]

How do I get income (payouts) from my annuity?

[DESCRIBE VARIOUS PAYOUT OPTIONS.]

OPTIONAL BENEFIT RIDERS

What other benefits can I choose?

[LIST AND DESCRIBE ALL OPTIONAL RIDERS. INCLUDE EITHER THE RANGE OR MAXIMUM FEE CHARGED FOR EACH.]

SECTION 5

RISKS

What are the risks?

[LIST AND DESCRIBE RISKS TO GUARANTEED ELEMENTS, RISKS ASSOCIATED WITH THE UNDERLYING INVESTMENTS, RESTRICTIONS ON WITHDRAWING MONEY, AND TAX LIABILITIES FOR EARLY WITHDRAWALS.]

FEES, EXPENSES AND OTHER CHARGES

What happens if I take out some or all of the money from my annuity?

[STATE SURRENDER CHARGES AND PROVIDE AN EXAMPLE.]

What fees or charges do you take from my annuity account value?

[LIST AND DESCRIBE CONTRACT FEES AND PROVIDE AN EXAMPLE.]

SECTION 6

Do I pay any other fees or charges?

[LIST AND DESCRIBE ANY OTHER FEES OR CHARGES THAT APPLY AND DISCLOSE AMOUNTS.]

TAXES

How will payouts and withdrawals from my annuity be taxed?

[DESCRIBE THE MEANING OF TAX-DEFERRED. INCLUDE A STATEMENT DESCRIBING ANY DEDUCTION TAKEN FOR PREMIUM TAXES. EXPLAIN TAX TREATMENT OF EXCHANGES. SUGGESTED LANGUAGE PROVIDED IN THE ACCOMPANYING INSTRUCTIONS.]

Does buying an annuity in a retirement plan provide extra tax benefits?

[EXPLAIN THAT THERE ARE NO ADDITIONAL TAX BENEFITS. SUGGESTED LANGUAGE PROVIDED IN THE ACCOMPANYING INSTRUCTIONS.]

OTHER INFORMATION

What else do I need to know?

Changes to your contract

[INCLUDE A STATEMENT EXPLAINING THAT THE CONTRACT OWNER WILL BE NOTIFIED IN WRITING OF ANY CHANGES TO THE CONTRACT. SUGGESTED LANGUAGE PROVIDED IN THE ACCOMPANYING INSTRUCTIONS.]

Compensation

[INCLUDE A STATEMENT EXPLAINING THAT THE COMPENSATION RECEIVED BY THE SALES REPRESENTATIVE COULD CREATE AN INCENTIVE FOR RECOMMENDING ONE PRODUCT OVER ANOTHER. SUGGESTED LANGUAGE PROVIDED IN THE ACCOMPANYING INSTRUCTIONS.]

Free Look

[INCLUDE STATE AND COMPANY SPECIFIC INFORMATION ABOUT FREE LOOK. SUGGESTED LANGUAGE PROVIDED IN THE ACCOMPANYING INSTRUCTIONS.]

What should I know about the insurance company?

[PROVIDE RELEVANT COMPANY INFORMATION, INCLUDING ADDRESS, PHONE NUMBER, WEBSITE. ALSO INCLUDE THE FOLLOWING STATEMENT, MODIFIED TO MEET SPECIFIC COMPANY SITUATION: *Note: the above information is current as of the annuity prospectus dated _____. This is a summary document. The annuity prospectus contains important information required under the federal securities laws. If you wish to receive a paper copy of the prospectus and supplement material, click here or call 800-123-4567. There is no charge for paper copies.*]

SECTION 7

SECTION 8

Sample of a Variable Annuity Disclosure

Example 3B is a sample of how a final disclosure document might look. Addendum X shows document to scale. This is a only a sample and is not intended to serve as a model disclosure for all types of annuities. Disclosure documents for each company and product will vary. Disclosure documents must be prepared consistently with FINRA conduct rule 2210 (Communications to the Public).

Note: The variable annuity disclosure document may be presented in two forms: print or electronic. If distributed electronically, in addition to providing links to the prospectus, keep references to specific pages in case consumers choose to print hard copies.

Variable Annuity Disclosure

This document reviews important points to think about before you buy this XYZ Life Insurance Company annuity. This variable annuity is a contract between you and our company. It is a single-premium annuity which means you buy it with one payment (premium).

This annuity is deferred, which means payouts begin at a future date. You can use an annuity to save money for retirement and to receive retirement income for life. It is not meant to be used to meet short-term financial goals. You may pay a fee if you take out money before the end of a time period specified by the contract.

This annuity is variable, which means its value depends on the performance of the investments you chose. This annuity can accumulate earnings in two ways: 1) from various investment choices we offer and 2) from a fixed interest account of XYZ Life Insurance Company.

If you have questions about this annuity, please ask your agent, broker, advisor, or contact a company representative at 800-123-4567.

THE ANNUITY CONTRACT

What are my investment options?

You can invest your money in our fixed interest account and in any or all of the investment choices we offer. Click on the links below or refer to pages of the annuity prospectus for more information about your choices.

- **Investment choices:** You may choose from 41 fund portfolios that have different investment objectives and levels of risk (see page 13).
- **Fixed account:** This choice offers a guaranteed rate of return, which currently is 3% (see page 12).

BENEFITS

What are the benefits of my annuity?

The benefits of your annuity are described below. Click on the links provided or read the section of the annuity prospectus for more information.

- **Death benefits:** This annuity includes a death benefit that will be paid to your beneficiary if you die before your income payouts begin. This benefit equals either your premium minus any withdrawals or the contract value, whichever is greater (see page 28).
- **Nursing care and terminal condition withdrawal:** If you or your spouse are in a hospital or nursing facility for 30 consecutive days or diagnosed with a terminal condition after the annuity was issued, you can take money from your annuity without paying a fee (see page 37).
- **Unemployment waiver:** If you (or your spouse) become unemployed, you won't pay fees when you take out money if certain conditions defined in the contract are met (see page 37).
- **Systematic payout option:** You can get monthly, quarterly, or annual payouts from your annuity in set amounts at any time without paying certain fees (see page 34).

What types of income (payouts) can I get from my annuity?

You can choose to get payouts for you and a joint annuitant for life or for a specific period of time or you can choose a lump sum payout. (Pages__ explain your payout options.)

OPTIONAL BENEFIT RIDERS AND FEES

What other benefits can I choose?

The contract also offers other benefits for an extra cost. Your choices and the fees charged are described below. You will pay a fee for each option you choose every year you own the annuity. The fee is calculated as a percentage of the value of your investments. Click on the links or refer to pages in the annuity prospectus and supplement material for more information, including how fees are calculated.

Annual Fees for Optional Benefit Riders

Additional Death Benefit Riders	CURRENT	MAXIMUM
<u>Additional Death Distribution Option</u> Pays your beneficiary an extra death benefit in specific situations (description of benefit: supplement pages 35-36; explanation of fee: supplement page 23).	.20%	20%
Living Benefit Riders	CURRENT	MAXIMUM
<u>Guaranteed Minimum Accumulation Benefit:</u> Guarantees a future value of your annuity no matter how the investment options you choose perform (description of benefit: supplement pages 4-5; explanation of fee; supplement pages 7-8).	.40%	.50%
<u>Guaranteed Minimum Withdrawal Benefit:</u> Guarantees an annual amount you can take out of your annuity regardless of its value (description of benefit: supplement pages 5-7; explanation of fee; supplement pages 7-8).	.50% (single) .85% (joint)	1.00%

RISKS

This annuity has several risks. Click on the links below or read the annuity prospectus for more information about:

- **Risks of your annuity contract:** There's a risk that we won't be able to pay claims on guaranteed annuity contract benefits, such as the guaranteed minimum accumulation value (see page 12).
- **Risks based on the investment portfolio you choose:** The investments you choose may decrease in value; if any of them do, the value of your annuity will go down. You may lose money if you take money out in whole or in part when the value is down (see pages 15–16).
- **Access to your money:** You may pay a fee (surrender charge) if you take out money before the end of the fifth contract year (see the next section of this disclosure or pages 24–25).
- **Your tax liability:** You may pay a 10% federal income tax penalty on earnings in addition to taxes due on earnings if you withdraw money before age 59 1/2 (see section on "Taxes" or pages 29–34).

CONTRACT FEES, EXPENSES AND OTHER CHARGES

What happens if I take out some or all of the money from my annuity?

You may pay a surrender charge if you take out money before the end of the fifth contract year. Here's how the charge is calculated.

Contract Year	1	2	3	4	5	6+
Surrender Charge	5%	4%	3%	2%	1%	0

Example: If you withdraw \$5,000 from your annuity in the third contract year, your surrender charge is \$5,000 x .03 = \$150. If you take out any amount after the end of the fifth contract year, there's no charge.

You may not have to pay a surrender charge if you take out part of your money (a partial surrender). [Click here](#) or see pages 20–21 of the annuity prospectus for more information about surrender charges.

What fees or charges do you take from my annuity account value?

You will pay fees every year you own the annuity. The fees are calculated as a percentage of the contract's value.

Annual Contract Fees

(not including fees for optional riders)

	Current	Maximum
Mortality and expense risk	.95%	1.35%
Administrative	.10%	.15%
Total annual contract fees	1.50%	2.27%

Example: Cost Based on Annual Contract Fees

Investment value	Current (1.50%)	Maximum (2.27%)
\$1,000	\$15.00	\$22.70
\$50,000	\$750.00	\$1,135.00
\$100,000	\$1,500.00	\$2,270.00

Total Annual Portfolio Operating Fees

Minimum	.85%	Maximum	1.42%
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Example: Cost Based on Annual Portfolio Operating Fees

Investment value	Minimum	Maximum
\$1,000	\$8.50	\$14.50
\$50,000	\$425.00	\$710.00
\$100,000	\$850.00	\$1,420.00

Do I pay any other fees or charges?

A service charge of \$35 will be deducted from your contract's value each year. This charge is waived if the contract value is more than \$50,000 on the contract anniversary or at the time of surrender. You also may be charged a transfer fee. Under your contract, you may make 12 free transfers annually. After that, we will charge you \$10 for each additional transfer. You also pay a fee for each optional rider you choose (see section on optional benefit riders and fees). [Click here](#) or see page 10 of the annuity prospectus for more information about fees and charges.

TAXES

How will payouts and withdrawals from my annuity be taxed?

Variable annuities are tax-deferred, which means you don't pay taxes on the annuity's accumulated earnings until the money is paid to you. When you take payouts or make a withdrawal, you pay ordinary income taxes on the accumulated earnings. You also defer paying taxes on earnings if you move money from one investment option in your annuity to another. You may pay a 10% federal income tax penalty on earnings you withdraw before age 59 1/2. If your state imposes a premium tax, it will be deducted from the money you receive.

You can exchange one tax-deferred annuity for another without paying taxes on the accumulated earnings when you make the exchange. Before you do, compare the benefits, features, and costs of the two annuities.

Does buying an annuity in a retirement plan provide extra tax benefits?

Buying an annuity within an IRA, 401(k), or other tax-deferred retirement plan doesn't give you any extra tax benefits. Choose your annuity based on its other features and benefits as well as its risks and costs, not its tax benefits.

OTHER INFORMATION

What else do I need to know?

Changes to your contract: We may change your annuity contract from time to time to follow federal or state laws and regulations. If we do, we'll tell you about the changes in writing.

Compensation: We pay the salesperson and the firm he or she is associated with for selling this annuity to you. The compensation they receive could create a conflict of interest by influencing them to recommend one product over another. Ask your salesperson for more information.

Free Look: Many states have laws that give you a set number of days to look at an annuity after you buy it. If you decide during that time that you don't want it, you can return the annuity and get all your money back. Read your contract (page ___) **or see page ___ of the annuity prospectus** to learn about your free look period.

What should I know about the insurance company?

XYZ Life Insurance Company offers a wide variety of retirement and financial security products, including life insurance, annuities, long-term care, and disability income insurance. We also are a leading provider of products and services to workplace-based pension plans—both defined contribution and defined benefit plans. Our financial strength is as follows: A+ (A.M. Best); AA (S&P); Aa3 (Moody's); and AA+ (Fitch).

XYZ Life Insurance Company
123 Main Street
Your Town USA
Telephone: 800-123-4567
www.XYZlife.com

Note: The above information is current as the annuity prospectus dated May 1, 2006. This is a summary document. The prospectus contains important information required under the federal securities laws. If you wish to receive a paper copy of the prospectus and supplement material, [click here](#) or call 800-123-4567. There is no charge for paper copies.



AMERICAN COUNCIL OF LIFE INSURERS
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