

SEC Facilitates Product Charge Variations

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SEC staff in December issued a Guidance Update that provides significant flexibility regarding how mutual funds and variable annuities (VAs) reflect multiple charge structures in their SEC registration statements. Over time, such charge structures have proliferated. For example, to more easily comply with the fiduciary rules, promulgated by the Department of Labor last year, a broker (or other “intermediary”) may want the sales charges and commissions to be the same for each mutual fund or VA that the intermediary offers its customers. Funds and VA issuers have therefore been under pressure to make available additional charge/compensation structures to meet the varied preferences of the intermediaries that sell these securities. So-called “clean shares” (discussed in “SEC Staff Allows Brokers to Set Commissions for Mutual Fund ‘Clean Shares’” on page 9) and “T-shares” can be useful for this purpose. For example, several funds and intermediaries have settled on T-shares – paying uniform commissions and typically having a 2.5 percent front-end load and a .25 percent per annum 12b-1 fee – as being broadly acceptable. Additional charge structures, including clean shares or T-shares, often may be added to a fund’s registration statement as sales load variations within a single class of shares. In that case, subject to certain conditions, the Guidance Update:

- permits the required information about the identity of, and charge structure applicable to, each intermediary to be contained in an appendix to the fund’s prospectus; and permits such appendix to be delivered as a standalone accompanying document, rather than an attachment to the prospectus.

“Q&As” issued by the staff in February clarify that such prospectus appendixes also can be used to disclose VA sales load variations, provided the requirements of the Guidance Update are otherwise satisfied. Whenever additional charge structures are added, the Guidance Update and Q&As also:

- encourage registrants, where appropriate, to request “selective review” or “template filing relief,” which can avoid a full SEC review of the relevant filings, and
- provide practical advice about making such requests

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