CARLTON FIELDS

No Hibernation for Issuers of Index-Linked Variable Annuities and Index Universal Life

February 16, 2023

After a blustery fall, the NAIC's Life Actuarial (A) Task Force (LATF) adopted the following at its December 2022 meeting:

- Actuarial Guideline LIV – Nonforfeiture Requirements for Index-Linked Variable Annuity Products (ILVA AG 54), and
- Revisions to Actuarial Guideline XLIX-A – The Application of Life Illustrations Model Regulation to Policies with Index-Based Interest Sold on or After December 14, 2020 (AG 49-A).

The ILVA Actuarial Guideline

LATF's ILVA AG 54 removed the fog as to ILVAs' status by considering ILVAs that satisfy the ILVA AG 54's requirements as variable annuities and thereby exempting ILVAs from NAIC Model 805, Standard Nonforfeiture Law for Individual Deferred Annuities. Under the ILVA AG 54, ILVAs seeking such exemption from Model 805 must provide equity between contract holders and the issuing insurance company in determining the ILVA's interim value. Specifically, to benefit from the exemption, an ILVA's interim value must be materially consistent with the value of the "Hypothetical Portfolio" supporting the ILVA's index account(s) over the term of the index account(s). The Hypothetical Portfolio consists of hypothetical fixed income assets and a package of hypothetical derivative assets established at the beginning of an index term and designed to replicate credits provided at the end of the index term.

While earlier drafts of the ILVA AG 54 threatened a whiteout on ILVAs by requiring a market value adjustment in determining the interim values, that snowstorm never materialized. Rather, the LATF-adopted ILVA AG 54 allows the value of the Hypothetical Portfolio to be determined by a fair value methodology, or by applying an MVA to book value and allows states to consider whether to apply an

MVA. To plow the way and avoid delays for states assessing whether including or excluding an MVA is appropriate, one regulator forecasted that an insurer should include an actuarial discussion in its filing as to why an MVA was or was not included. This discussion would be in addition to the actuarial certifications required by the ILVA Actuarial Guideline.

The LATF-adopted ILVA Actuarial Guideline has an effective date of July 1, 2024 for contracts, riders or endorsements issued on or after that date.

The AG49-A Revisions

LATF also adopted revisions as a "quick fix" to AG49-A, which pertains to illustrations for indexed universal life policies (IUL). The revisions freeze the differences between the illustrated rates for "traditional" capped S&P 500 benchmark indexed accounts (BIAs) and the illustrated rates for indexed accounts based on uncapped volatility controlled indexes that include a fixed bonus. The revised AG 49-A accomplishes this by limiting the leverage that may be illustrated on all indexed accounts options, based upon the leverage on the BIA. It does so by calculating the leverage percentage on the BIA and multiplying that by the lower of the hedge budget for the BIA and the hedge budget for the respective indexed account options available under an IUL. This fix also accounts for current option costs: when volatility is higher and option costs are higher, the leverage permitted to be illustrated would be lower.

A May 1, 2023 effective date was adopted by LATF. However, consumer representative Birny Birnbaum raised several questions about this effective date and LATF chair Fred Anderson noted the discussion in his remarks.

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On February 24, 2023, the (A) Committee will consider the adoption of IVLA AG 54 and the revisions to AG 49-A.

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