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## SEC Approves Summary Prospectuses, Layered Disclosure for Variable Insurance Contracts

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The US Securities and Exchange Commission (SEC) has adopted<sup>1</sup> comprehensive reforms to its disclosure requirements for variable annuity (VA) and variable life insurance (VLI) contracts (contracts).

The centerpiece<sup>2</sup> of these reforms is new Rule 498A under the Securities Act of 1933 (Securities Act), which authorizes the *optional* use of “initial” and “updating” summary prospectuses for contracts. The summary prospectuses will be much shorter and more contract owner-friendly than the full statutory prospectuses currently being delivered annually.

The SEC authorized the summary prospectuses as part of a layered disclosure regime patterned after the one adopted<sup>3</sup> for mutual funds more than 11 years ago. The SEC did so in a 713-page release (SEC Release).

This article summarizes important aspects of the new disclosure requirements and options for contracts, including amendments to the registration statement forms for VA contracts (Forms N-3 and N-4) and VLI contracts (Form N-6), and related rule amendments. It also offers practical tips (Practice Pointers) for compliance and usage.

### Initial Summary Prospectuses

Rule 498A permits initial summary prospectuses (ISPs) to be used for initial sales of contracts. The required content of an ISP includes:

1. A “Key Information Table” setting forth “key facts” about the contract, including: fees and expenses, risks, certain restrictions under the contract, tax treatment, and conflicts of interest.
2. A narrative overview of the contract’s purpose, benefits, and other features and characteristics.
3. A summary of the benefits available under the contract.
4. A brief description of the procedures for purchasing the contract, and a brief description of the process and effect of surrenders and withdrawals.
5. A table setting forth the same “fee table” information that appears in the statutory prospectus for the contract. (Illustrations or examples are permitted, provided they are responsive to items required in the ISP.)
6. An appendix with a table setting forth information about each underlying mutual fund portfolio

(fund) and each fixed account investment option available under the contract. For each fund, this includes, for example: (i) the fund's type or investment objective, adviser (or, as relevant, sub-adviser), current expenses and performance information; (ii) any fund platform charges; and (iii) any investment restriction resulting from "hard-closes" or "soft-closes" of a fund or based on what features or benefits a contract owner has selected.

An ISP must describe only a single contract, or "classes" of the same contract that vary principally with respect to distribution-related fees and expenses. Each ISP must be filed as an exhibit to a contract's initial registration statement (and/or any material amendments to the registration statement) under the Securities Act.

### Practice Pointers

- **Standardized Format**—Rule 498A is highly prescriptive, and life insurance companies (insurers) and their separate accounts will have limited flexibility to include information that is not specifically prescribed.
- **Fee Table**—The amended forms *require* the fee table to have a line item showing gross fund expenses (before expense reimbursements or fee waiver arrangements) and *permit* the fee table to have an additional line item showing fund expenses net of expense reimbursements or fee waiver arrangements that are in place and reflected in the fund's Form N-1A registration statement. Fee table expense examples must assume a \$100,000 investment.
- **Participation Agreements**—Amendments to participation agreements (buy-sell agreements between insurers and funds) may be advisable to, among other things, (i) limit liability for fund information required in the fund appendix and posted online and (ii) allocate costs related to mid-year fund changes that require amendments to contract summary prospectuses.

- **Flexible Terminology**—The SEC clarified that separate accounts are not required to use the specific terminology in the forms (other than certain headings), provided any alternate terminology clearly conveys the meaning of, or provides comparable information to, the terms used in the forms.

The ISP generally may not be bound together with any other materials. However, the ISP may be bound together with the fund summary and statutory prospectuses, subject to the following conditions:

1. All of the funds whose prospectuses are bundled together are available to the contract owner to whom they are sent or given; and
2. A table of contents identifying each fund summary and/or statutory prospectus that is bound together (and the page number on which each document is found) is included at the beginning or immediately following a cover page of the bound materials.

### Updating Summary Prospectuses

A separate account may use an updating summary prospectus (USP) for an outstanding contract only if an ISP is being used for all new sales of each currently offered contract covered by the same statutory prospectus. Unlike the ISP, the USP is not limited to a single contract, but may include any or all outstanding contracts covered in the statutory prospectus.

A USP covers the period since the date of the most recent USP or statutory prospectus that contract owners received.

The required content of a USP includes:

1. A concise description of several specified types of changes, if any, that have occurred since the most recent summary or statutory prospectus provided to the contract owner. Specifically, the USP must include a discussion of changes that relate to the:

- a. Key Information Table,
  - b. overview of the contract,
  - c. availability of investment options,
  - d. Fee Table,
  - e. standard death benefit (for VLI contracts),
  - f. benefits available under the contract,
  - g. purchases and contract value (premiums for VLI contracts),
  - h. surrenders and withdrawals, and
  - i. lapse (for VLI contracts);
2. A current Key Information Table; and
  3. A current appendix setting forth information about each fund, in each case comparable to that described above for ISPs.

A USP may include a concise description of any other change to the contract that the separate account wishes to disclose, provided the change occurred within the relevant time period.

The conditions for use of a USP generally are similar to those for an ISP. One exception is that no USP is required to be filed as an exhibit to the registration statement. Rather, a USP need only be filed pursuant to Rule 497 under the Securities Act.

## E-Delivery of Fund Summary Prospectuses

Rule 498A provides an *optional* electronic method for satisfying fund prospectus delivery obligations under Section 5(b)(2) of the Securities Act, subject to several conditions.

The conditions include, among other things:

1. An ISP must be used for each contract that is still being offered pursuant to the registration statement;
2. A summary prospectus must be used by the fund; and
3. The fund's current summary prospectus, statutory prospectus, statement of additional information (SAI), and most recent shareholder reports (collectively, Fund Documents) are available online in accordance with specified requirements.

## Practice Pointers

- **Fund Selection**—An insurer may wish to limit its investment options to funds that make available a summary prospectus.
- **Website Hosting**—An ISP must include a single website address where each of the required online Fund Documents, together with the required online contract documents, may be accessed. At the same time, the SEC allows flexibility regarding the location where electronic versions of those materials are posted (and permits the Website to be hosted, for example, by a financial intermediary or other entity other than the insurer).
- **Form N-3**—This e-delivery option is not relevant to separate accounts registered on Form N-3, as managed separate accounts registered on this form do not customarily invest in funds. Separate accounts registered on Form N-3 may invest in funds, but there would be no fund prospectus delivery obligation.
- **No Separate Delivery of Mid-Year Fund Supplements**—If a fund amends its prospectus between annual updates, the updated prospectus (including any prospectus supplements) must be posted online. However, the SEC is not requiring separate delivery of fund prospectus supplements to contract owners.

## Contract Registration Forms

The SEC also adopted significant amendments to the registration statement forms for VA contracts (Forms N-3 and N-4) and VLI contracts (Form N-6). Under these amendments, essentially all of the substantive disclosures required in ISPs and USPs also will be included in the statutory prospectuses for the related Forms N-3, N-4, or N-6.

Other highlights of the amendments to these forms include:

1. No longer requiring accumulation unit value tables—which have grown exceedingly

voluminous over the years—in VA prospectuses or SAIs (or anywhere else); and

2. Withdrawing the “Guidelines” to preparation of Forms N-3 and N-4.

## Practice Pointers

- **Substantial Changes**—The foregoing and many other form amendments will require very substantial rewriting and reorganizing of the affected registration statements.
- **Timing**—Compliance with the new requirements is not mandatory for initial or amendment filings on Forms N-3, N-4 and N-6 that are made before January 1, 2022. Nevertheless, earlier compliance with these requirements would be advantageous in order to begin using the new ISPs and USPs and the new e-delivery procedure for fund summary prospectuses.
- **Flexible Terminology**—The SEC reversed itself on the controversial proposal mandating use of specified terminology. Except for certain headings, the registration statement instructions now provide separate accounts with the flexibility to use alternate terminology other than that used by the form, so long as the alternate terminology clearly conveys the meaning of, or provides comparable information as, the terms used by the form.
- **Presentation**—Insurers offering both VA and VLI contracts should recognize that the SEC wants to promote uniformity of disclosure not only across all VA contracts or across all VLI contracts, but across all VA and VLI contracts. The SEC says that contract offerees who are considering buying a VA contract may also be considering buying a VLI contract (and vice versa). The SEC, therefore, believes that a consistent presentation for both VA and VLI contracts could reduce confusion and promote understanding.
- **Multiple Contracts and Prospectuses**—The SEC’s form amendments permit (i) multiple

contracts in a single prospectus where all of the contracts are “essentially identical” and (ii) multiple prospectuses in a single registration statement where all of the prospectuses are “substantially similar.” However, the SEC is grandfathering any variances from these principles that already exist as of the effective date of the form amendments, which was July 1, 2020. As a result, future amendments or revisions to the affected registration statements and amendments will not be required to eliminate those variances.

- **Non-Principal Risks**—In a change from its proposal, the SEC is requiring that information regarding non-principal risks that is not otherwise required to be in the prospectus must be disclosed in the SAI, as opposed to the prospectus. The SEC believes that prospectus disclosure of non-principal risks could add complexity and length to the prospectus and obscure principal risks that are more relevant to contract offerees and owners.

## Electronic Access and Formatting

New electronic access and formatting requirements apply under the registration statement form amendments discussed above and under the preconditions for using summary prospectuses. Many of these are discussed further under “Website and Online Document Obligations,” below. Briefly:

1. Contract summary prospectuses (whether ISPs or USPs), statutory prospectuses, and SAIs must be easily and publicly available at a Website in easily readable and retainable form.
2. Persons accessing these documents must be able to move directly and electronically between documents and portions of documents in specified ways that, for example: (i) link material in a summary prospectus with portions of the statutory prospectus or SAI that provide further explanation; (ii) link defined terms in summary prospectuses to the definitions of those terms; and (iii)

link tables of contents in statutory prospectuses and SAIs with the discussions of the items referenced in those tables.

3. If the new procedure is relied on for electronic delivery of fund summary prospectuses, those summary prospectuses, together with the related Fund Documents, must be among the documents available at the above-mentioned Website.
4. Inline XBRL format will be required to be used for the submission of specified disclosures in statutory prospectuses contained in certain filings made on or after January 1, 2023. Accordingly, separate accounts have an additional year to comply with the XBRL requirement, as compared to most of the other mandates contained in the SEC's reforms.

### Practice Pointer

- **Scope of work**—Compliance with these new electronic access and formatting requirements may require significant investments of time and resources for some separate accounts, depending on what practices or capabilities they already have in place.

### Discontinued Contracts

Many VA and VLI separate accounts have relied on a line of SEC Staff no-action letters (Staff Letters) that provide an alternative to updating their contract registration statements and delivering current contract prospectuses every year for certain of these contracts. The Staff Letters are limited to circumstances where sales of the VA or VLI contract had been discontinued and, in almost all cases, fewer than 5,000 of the contracts remained outstanding.

In these cases, and subject to certain conditions, the Staff Letters have permitted separate accounts generally to satisfy their updating obligations by providing contract owners each year with:

1. The audited financial statements of the separate account that supports the contract (plus, in the case of VLI, financial statements of the insurer); and
2. The fund materials that contract owners otherwise would usually receive (for example, fund statutory or summary prospectuses (and supplements thereto), proxy statements, and annual and semi-annual shareholder reports).

The SEC Release announced a new “Alternative Disclosure” procedure for certain VA and VLI contracts that have ceased to be offered for new sales. Although there were some inconsistencies among the Staff Letters, the terms and conditions of the new Alternative Disclosure procedure generally are the same as the terms and conditions set out in those letters.

The SEC made the new Alternative Disclosure procedure available beginning July 1, 2020. The SEC Staff announced<sup>4</sup> the withdrawal of the Staff Letters effective on that date.

The new procedure does make some changes, however, including those addressed below.

### Practice Pointers

- **Owners versus Contracts**—Under the new Alternative Disclosure procedure, the 5,000 contract owner limit will apply without any exception, whereas several of the Staff Letters involved larger numbers. Also, this test will be based on the number of current contract *owners*, whereas the Staff Letters focused on the number of outstanding *contracts*.
- **Entire Registration Statement**—For purposes of this limit under the Staff Letters, some insurers have counted certain contracts separately from other contracts covered by the same registration statement. However, under the new Alternative Disclosure procedure, owners of all contracts covered by a registration statement will have to be counted.

- **Consideration of Qualification**—In light of the foregoing, insurers that have been relying on Staff Letters should consider carefully whether they will still qualify under the somewhat different counting methodology that will apply under the new Alternative Disclosure procedure.

As to VA contracts relying on the new Alternative Disclosure procedure, the insurer's financial statements must be made available on request in all cases. Only a few of the Staff Letters required this for VA contracts.

### Practice Pointer

- **VA Insurer Financials**—The Staff Letters that required an insurer's financial statements to be made available also required that contract owners receive annual disclosure of their ability to receive those financial statements at no cost. The SEC Release does not specifically reaffirm this annual disclosure requirement. However, insurers issuing VA contracts should consider providing such annual disclosures, if they seek to rely on the new Alternative Disclosure procedure and do not use the annual Notice Document discussed below.

Under the new Alternative Disclosure procedure, the financial statements of the separate account and the insurer also will in all cases have to be filed annually with the SEC pursuant a new EDGAR submission type created by the SEC. These filings would not be part of the contract registration statement, and no updating of that registration statement would be required.

### Practice Pointer

- **EDGAR Filing of Financials**—These filings apparently will be required notwithstanding that the separate account's and insurer's financial

statements are filed and available pursuant to other EDGAR filings for other contracts.

Subject to certain conditions, the new Alternative Disclosure procedure includes a "Modernized Alternative Disclosure" option under which an insurer would provide contract owners with an annual "Notice Document" containing the information required to be included in a USP instead of (i) the fund's statutory or summary prospectus and (ii) any separate account or insurer financial statements.

Annual Notice Documents must:

1. Be filed with the SEC as a new EDGAR submission type created by the SEC, although the Notice Documents will not be part of, or require updating, the contract registration statements;
2. Include the information that a USP would contain; and
3. Identify a Website that makes publicly available the Fund Documents and the separate account's and insurer's financial statements.

### Practice Pointer

- **Notice Document Costs/Benefits**—As to contracts providing Alternative Disclosure under the modernized approach, an insurer can avoid delivering fund prospectuses and separate account and insurer financial statements if the insurer prepares and delivers a Notice Document and posts Fund Documents and the specified financial statements online.

Insurers with discontinued contracts that have relied on withdrawn Staff Letters and that choose not to rely on, or do not qualify for, the new Alternative Disclosure procedure may be required to update the registration statements for those contracts. This could be costly. The SEC Staff has announced<sup>5</sup> May 1, 2021 as the deadline for updating registration statements for contracts that previously relied

on the Staff Letters, but do not qualify for the new Alternative Disclosure procedures.

The SEC did not grant any relief whatsoever for contracts whose sales continue beyond July 1, 2020, or that had 5,000 or more contract owners at that date.<sup>6</sup> However, the SEC and its Staff are open to further consideration of the subject.<sup>7</sup>

### Practice Pointer

- **Precautions for New Contracts**—When developing contracts that require the filing of new SEC registration statements, insurers should take into consideration the fact that, unless the SEC or its Staff grants some further relief, the insurer may have to bear indefinitely the costs of maintaining a current registration statement, even if new sales are discontinued and there are fewer than 5,000 contract owners. These costs may be substantial, notwithstanding that the new possibility of using USPs and e-delivery of fund prospectuses may help control the costs. Accordingly, insurers may wish to consider whether to incorporate features into their VA and VLI contracts that could enable them to cease updating the registration statements at some point. Such features might include, for example, contract provisions under which additional premium payments or transfer amounts could, at the election of the insurer or under specified circumstances, no longer be allocated to any separate account investment option.

### Other Rule Modifications

The SEC made a number of other changes to rules that apply to VA and VLI contracts.

Most of the changes are of a minor conforming, correcting, or updating nature. Most notably, the SEC eliminated:

1. The 9 percent maximum that Rule 6c-8 under the Investment Company Act of 1940 (1940 Act)

had imposed on the amount of VA contingent deferred sales charges;

2. A numerical limit that Rule 11a-2 under the 1940 Act had placed on the aggregate deferred sales charges applicable to exchanged and acquired contracts in certain exchanges between VA contracts or between VLI contracts; and
3. The “(T)” for “temporary” in the designation of “Rule 6e-3(T)” under the 1940 Act, making the Rule permanent.

### Practice Pointer

- **Removal of Charge Limits**—Insurers may wish to consider whether they have active contracts or exchange programs under which contracts have been constrained by a charge limitation that now has been removed from Rule 6c-8 or 11a-2 under the 1940 Act. If so, depending on the circumstances, it may be possible and desirable to modify the contract or any charge monitoring procedures that are in place. In any event, the removal of the limitations from these rules will be relevant to the design of some new contracts and exchange programs.

### Advertising and Supplemental Sales Literature

The SEC amended Rule 482 under the Securities Act to make clear that contract summary prospectuses are excluded from its coverage, similar to the way fund summary prospectuses are treated. The definition of “prospectus” in Section 2(a)(10) of the Securities Act excludes communications regarding a security that are accompanied or preceded by a statutory prospectus for the security. Such communications are commonly referred to as “supplemental sales literature,” and, because they are not prospectuses, they do not carry prospectus liability.

Rule 498A permits a contract summary prospectus to serve as the prospectus predicate for

supplemental sales literature, subject to the following conditions:

1. It is proved that, prior to or at the same time with such communication, a summary prospectus was sent or given to the person to whom the communication was made;
2. The summary prospectus is not bound with any other materials or is bound only to the extent that the Rule permits as summarized above under “Initial Summary Prospectus”;
3. The summary prospectus satisfies certain designated requirements for the ISP or USP; and
4. The ISP, USP, contract statutory prospectus, and contract SAI are publicly accessible, free of charge, on a website in the manner summarized above under “Website and Online Document Obligations.”

### Practice Pointer

- **Avoiding “Prospectus” Status**—If a summary prospectus meeting the above four requirements of Rule 498A or a statutory prospectus has not been provided, certain types of contract communications that do not comply with Rule 482’s requirements could be deemed to be “prospectuses” that do not meet the requirements of Section 10 of the Securities Act. In that case, the use of such communications would result in a violation of Section 5 of the Securities Act.

## Website and Online Document Obligations

To operationalize the layered disclosure framework of the summary prospectus, the SEC requires the following documents to be made publicly available online, free of charge, at the Website address specified on the summary prospectus cover page: (1) current ISP; (2) USP; (3) statutory prospectus; (4) SAI; and (5) in the case of a separate account on

Form N-3, the separate account’s most recent annual and semi-annual reports to shareholders under Rule 30e-1 under the 1940 Act.

These documents must be available online on or before the summary prospectus is delivered to contract owners. The documents must remain on the Website for at least 90 days after:

1. The “carrying or delivery” of the contract security, if the online documents are used for meeting the prospectus delivery obligations; or
2. The time the person sends or gives the communication to contract owners, if non-prospectus communications are used.

The SEC also requires that the Website address be specific enough to lead contract owners directly to the required online contract documents. However, the Website address can be a central site with prominent links to each document.

The online contract documents must be presented in a manner that is “human-readable” and capable of being printed on paper in “human-readable” format. For usability, all texts should appear on the screen without being cut off no matter the size of the screen. Also, the online contract documents must be presented in formats that are convenient for both reading online and printing on paper.

### Practice Pointers

- **Flexible Formatting**—This requirement can be satisfied by providing one format that is convenient for reading online, and another format that is convenient for printing on paper.
- **Consequences of Non-Compliance**—The convenient-for-both-reading-online-and-printing-on-paper-requirement is not a condition for relying on the rule. However, non-compliance would constitute a violation of SEC rules.

Also, to promote the usability of the online documents, the SEC requires linking:



1. Within documents to allow readers to move directly between a table of contents of the statutory prospectus or SAI and the related sections of that document; and
2. Between online versions of summary and statutory prospectuses so that a reader can move back and forth between each section of the summary prospectus and any related section of the statutory prospectus and SAI that provides additional detail.

To leverage technology and enhance reader understanding, the SEC requires that readers be able to either (i) view the definition of each special term in an online summary prospectus upon command (such as “hovering” over the term) or (ii) move directly back and forth between each special term and the definition found in the glossary.

The SEC also requires that persons accessing the Website designated on the summary prospectus cover page be able to permanently retain, free of charge, an electronic version of each of the required online contract documents. The retainable versions should be “human-readable” and printable in “human-readable” format. The retainable versions should include links within a document to allow movements back and forth between each section heading in a table of contents of that document and the section of the document referenced in that section heading. However, the retainable versions need not maintain links *among* multiple downloaded documents.

### Practice Pointers

- **Consequences of Non-Compliance**—Failure to comply with the requirements regarding the online availability of the required online contract documents could result in a violation of Section 5(b)(2) of the Securities Act, unless the contract statutory prospectus is delivered by other means.
- **Safe Harbor**—The SEC provides that the conditions regarding the availability of the required online contract documents will be deemed to

be met, even if the required online contract documents are temporarily unavailable, if the separate account has reasonable procedures in place to ensure that those materials are available in the required manner. This safe harbor does not apply to cases of repeated or prolonged noncompliance.

Finally, the SEC requires that any Website address included in an electronic version of the summary prospectus be an “active hyperlink.” To ensure that the hyperlinks are active, separate accounts must monitor the addresses to check whether the websites are accurate and functioning.

### Practice Pointers

- **No Hyperlinks for Cross References**—Noting the burden of adding hyperlinks for cross-references to both internal disclosures and external documents, the SEC eliminated the proposed requirement of providing hyperlinks for cross-references in an electronic summary prospectus.
- **Consequences of Non-Compliance**—The failure to comply with the “active hyperlink” requirement will not negate a separate account’s ability to rely on the rule to satisfy delivery obligations under Section 5(b)(2), but will constitute a violation of SEC rules.

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authors and do not necessarily reflect the views of the firm, its other lawyers, or its clients.

#### NOTES

- <sup>1</sup> *Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts*, Securities Act Release No. 10765, Securities Exchange Act Release No. 88358, Investment Company Act Release No. 33814 (Mar. 11, 2020), available at [sec.gov/rules/final/2020/33-10765.pdf](https://www.sec.gov/rules/final/2020/33-10765.pdf) [hereinafter SEC Release], proposed in *Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts*, Securities Act Release No. 10569, Securities Exchange Act Release No. 84508, Investment Company Act Release No. 33286 (Oct. 30, 2018), available at [sec.gov/rules/proposed/2018/33-10569.pdf](https://www.sec.gov/rules/proposed/2018/33-10569.pdf).
- <sup>2</sup> In addition, the SEC adopted and rescinded rules under the Investment Company Act of 1940 to reflect legislation regulating contracts that Congress adopted in 1996. See National Securities Market Improvement Act of 1996 (Pub. L. No. 104-290, 110 Stat. 3416 (1996)). The SEC also made permanent a rule regulating VLI contracts that the SEC adopted on a temporary basis in 1984. See *Separate Accounts Funding Flexible Premium Variable Life Insurance Contracts*, Investment Company Act Release No. 14234 (Nov. 14, 1984) (adopting Rule 6e-3(T)).
- <sup>3</sup> For a discussion of the SEC's delay in authorizing a summary prospectus for VA and VLI contracts, as well as in taking the action described in *supra* n.2, see

Gary O. Cohen, "SEC Acts on Variable Insurance Matters Stretching Back for Decades," *The Investment Lawyer*, Vol. 27, No. 7 (July 2020).

- <sup>4</sup> Subsequent to the SEC Release, *supra* n.1, the SEC Staff announced the withdrawal of 20 Staff Letters effective July 1, 2020 and two Staff Letters effective January 1, 2022. The latter two letters were not related to the discontinued contract matter. See "Division of Investment Management Staff Statement Regarding Withdrawal Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts Rulemaking," *IM Information Update*, IM-INFO-2020-01 (Mar. 2020, modified April 22, 2020) ("the Staff is withdrawing the Staff Letters listed in Appendix herein, effective as of the dates noted"), available at <https://www.sec.gov/investment/accounting-and-disclosure-information/adi-2020-10-filing-and-delivery-obligations>.
- <sup>5</sup> *Id.* ("For purposes of the first year following July 1, 2020, in the Staff's view, an issuer that is not eligible under the Commission position should meet its obligations to update the registration statement for the variable contract or deliver updated prospectuses to existing investors by May 1, 2021 (the annual update subsequent to July 1, 2020)").
- <sup>6</sup> The SEC states that "[w]e are declining to adopt any form of going-forward relief for discontinued contracts at this time." SEC Release, *supra* n.1, at 311.
- <sup>7</sup> The SEC states that "[w]e believe that the Commission and its Staff would benefit from further study and data" and "welcome input from the public as we undertake this further study." *Id.* at 312.

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