

Executive Compensation Disclosure – Partial Relief for Insurance Products

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For many years, insurance company issuers of non-variable products that are registered with the SEC on Forms S-1 or S-3 have been required to disclose compensation information about highly-compensated executive officers of the issuer.

However, insurance companies issuing, or contemplating issuing such products – which include certain indexed-linked annuities and market value adjustment annuities – have long questioned the relevance to contract owners of executive compensation information. Among other things, requiring such information to be disclosed seems anomalous when the same information has not been deemed relevant or required to be disclosed in SEC registration statements filed for variable annuity contracts and variable life insurance policies.

Some insurance companies do not have employees of their own, but instead rely on a management or shared services agreement under which a parent or other affiliated company provides personnel to the insurer. Moreover, the affiliated company often determines and pays the compensation of the insurer's executives and the insurer often plays no part in setting such compensation.

For insurers operating under such a management or shared services agreement that register products on Forms S-1 or S-3, the SEC staff announced, from the podium at the November 2018 ALI-CLE Life Insurance Company Products Conference, informal relief from the executive compensation disclosure requirements. Instead of disclosing the specifics of executive compensation, those insurers would need to disclose only such information about the management or shared services agreement as is mandated by the applicable SEC disclosure requirements for transactions between issuers and their related persons.

This informal relief is certainly welcome news for insurers eligible to rely on it. But what about insurers that employ their executives more directly and register insurance products on Forms S-1 or S-3? For those insurers, there is no relief, and executive compensation information must continue to be disclosed in such registration statements. The ultimate answer may be a new registration form for insurance products that, unlike the Forms S-1 and S-3 on which they currently are registered, does not require executive compensation disclosure.