

SEC Proposes Summary Prospectus Option and Modernized Disclosure for Variable Insurance Products

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On October 30, the SEC voted to propose modernized disclosures for variable annuities and variable life insurance policies.

The proposal would permit:

- the use of an initial summary prospectus (ISP) for variable insurance products currently offered to new investors,
- the use of an updating summary prospectus (USP) for existing investors, and
- online delivery (aka, access equals delivery) of underlying fund prospectuses and other documents.

Initial and Updating Summary Prospectuses

The ISP would include specified key disclosures including, among other things:

- a cover page including required legends,
- a contract overview,
- a “key information” table providing a brief description of fees, risks, restrictions, taxes and conflicts of interest,
- a summary description of benefits,
- information about how to purchase and surrender the contract,
- the possibility of contract lapse (for variable life policies),
- a full fee table, and
- an appendix providing summary information about the available underlying funds.

The USP would highlight three key disclosures including, among other things:

- a concise description of any contract-related changes that occurred within the prior year affecting the fee table, the death benefit and other benefits, and the availability of the underlying funds,
- the key information table, and
- an appendix providing summary information about the available underlying funds.

Access Equals Delivery for Underlying Fund Prospectuses

The proposal also would permit online delivery of underlying fund prospectuses, including underlying fund prospectus amendments. The access equals delivery approach would be conditioned on the following:

- an ISP is used for each currently offered contract,
- a summary prospectus is used for the underlying fund, and
- the underlying fund’s current summary prospectus, statutory prospectus, statement of additional information, and most recent shareholder reports are posted online and made available in accordance with specified conditions.

Issues for Special Consideration

The summary prospectus proposal provides a long-awaited option for reducing the length of variable contract prospectuses that must be delivered to customers, and may reduce printing and mailing costs for many market participants. However, the proposal may impose additional costs and compliance burdens for issuers that should not be underestimated. Some items to note for special consideration or possible comment include the following:

- Issuers choosing to use the proposed summary prospectus regime would be required to create and manage two new types of disclosure documents (the ISP and USP) for each contract, in addition to the full statutory prospectus.
- Each ISP could only describe a single contract, which may frustrate issuers that currently market multiple contracts in a single prospectus.
- Each ISP and USP appendix could only include funds currently offered under the contract, which creates an information disparity for investors in closed funds.
- Each ISP and USP appendix would be required to include performance information for each currently offered underlying fund, which may complicate administration and coordination with fund partners and may increase potential liability for insurers.
- The USP would only be allowed to describe changes that occurred since the most recent update.
- The ISP and USP options would not be available for contracts registered on forms S-1 or S-3.
- The access equals delivery conditions for underlying fund prospectuses could require enhanced coordination among insurers and fund partners to ensure required fund documents are posted online and made available to customers.
- Reliance on the “Great-West” line of no-action letters (for not updating registration statements covering certain discontinued contracts) would be available only for contracts Great-Westted before the effective date of the new rule.
- Going forward, the SEC proposes allowing discontinued contracts to follow one of two Great-West-like approaches. Both approach 1 and approach 2 would require annual delivery of a USP-like document. In addition, approach 2 would require issuers to update their registration statements whenever there are material changes to the offering (including to an underlying fund option).
- The access equals delivery option for underlying fund prospectuses would not be available for grandfathered contracts that continue to rely on the Great-West line of letters (but not approaches 1 or 2).
- Variable insurance product registrants would be required to submit Interactive Data Files containing data about their products using the Inline XBRL format.

The public comment period ends on February 15, 2019.