Comments on Release No. 33-11250; 34-98624; IC-35028

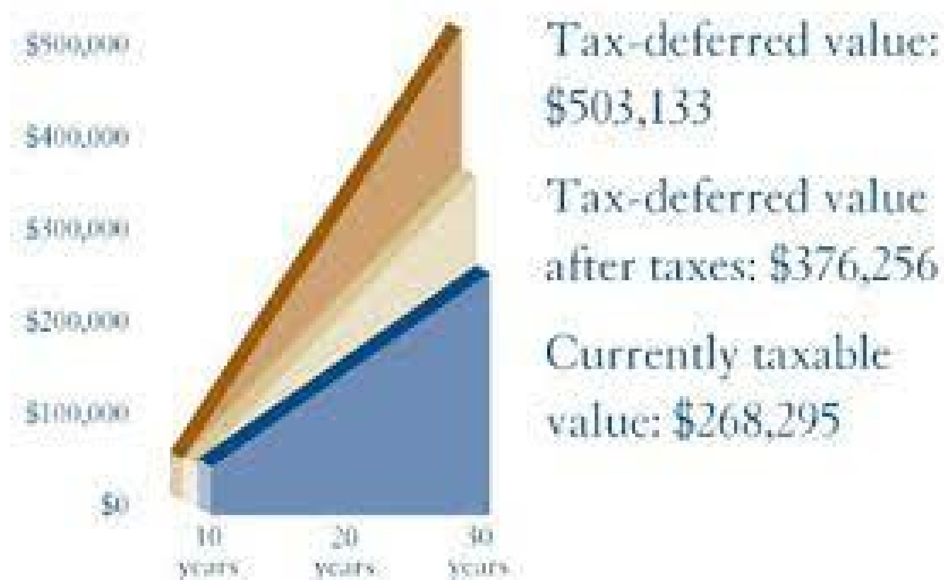
File No. S7-16-23

Dear SEC:

I was a registered representative for more than 20 years at a firm that sold many annuities. I later went to law school and became a legal and compliance attorney at that same firm. Now, I am partially retired and spend my time helping victims of elder abuse and other frauds. I am also a member of PIABA. Please accept my comments on the RILA proposal.

1. Produce a single plain English disclosure for investors. For most investments you own, you receive a prospectus when you make your purchase. When you buy a RILA (or a variable annuity), you receive both a prospectus and a contract. The contract is the agreement between an investor and the insurance company and that document controls for state law purposes. It also includes investor specific information on a data page. Investors also receive a prospectus which controls for securities law purposes. Why have 2 documents both written for retain investors. How is an investor to know which to review? The SEC should work with the states to make the contract also be considered part of the prospectus. The SEC can then put financial statements and other securities law requirements in the statement of additional information.
2. Investors do not read prospectuses. This is why the marketing elements of your proposal should be your focus. Below are some concerns I have about marketing (and disclosures more generally):
    a. RILA (and all annuities) are tax deferred. Annuity sellers often provide charts showing the benefit of tax deferral. However, these benefit are grossly exaggerated.

        Sample:

        These charts and examples are fraudulent because:

        - They assume all taxable investments are taxed at ordinary income tax rates.
        - They assume all gains on taxable investments are paid every year.
        - They compare a (pre-tax) tax-deferred value to an after-tax taxable account. (This is inappropriate because there is no way of getting money out of the tax-

deferred account without paying taxes, so showing a pre-tax value is misleading).

- They ignore product fees (including implicit fees) which eat into any tax benefit that may be left.

The SEC must prohibit these presentations. It is not enough to have fine print explaining the assumptions.

b. RILAs are marketed as having no ongoing fees, and suggests if you hold the RILA for the full surrender charge period there are no fees and charges. This is not true. There are fees that are just harder to identify and attach a static number to. Do not let RILAs hold themselves out as not imposing ongoing fees and charges.

c. Death benefits are not benefits. Many annuities are marketed as providing death benefits. However, these so-called "benefits" are worse than any other investment because they are fully taxed at ordinary income rates, as opposed to getting a stepped-up cost basis. Annuities should not be able to market these features as benefits when they are a pitfall as compared to nearly all other investments. Also, it is often just a return of your investment. To call that a death benefit is to say mutual funds, stocks and bonds have death benefits.

d. The biggest drag (and benefit to the insurance company) on RILAs and all indexed annuities is the use of a price return index instead of a total return index. Disclosures do not go far enough explaining these differences. This is particularly apparent for more recent index options that provide no upside or downside limits. So, the insurer in essence gets the total return on its investments and passes along the lower price return, keeping the difference. These options may sound better than an index fund since there are not apparent fees, but investors will get far less than an index fund.

e. RILA issuers should be permitted and even required to produce fair presentations of performance. I realize most RILAs have only launched in the last few years, but investors need to see how these products operate under real market conditions. I realize this is difficult because the rates offered keep changing, but you should not prohibit performance. Instead, you should mandate a particular presentation that uses really market conditions. Presentations should be based on the average caps used over a calendar year and presentations should be shown on a calendar year basis. Do not allow back-tested index performance or performance for a period prior to the product's launch.

f. Unlike nearly all other investments where the issuer is a fiduciary (such as funds or equity investments), with RILAs, the insurance company has no duty to act in the investor's interests when setting or changing rates. The SEC needs to take steps to rein in this unfettered freedom of action. The ability to unilaterally change a long-term product for the worse seems to me to be against public policy and an unconscionable set of terms to a contract. This is particularly apparent from the exceptionally low minimum rates.

g. Unlike most other investments, insurance laws let the insurance company hold on to assets for up to 6 months after investors request their money. This practice may be remote, but must be more prominently disclosed because when markets are stressed, this practice may become more common.

3. Form N-4 Disclosures:

a. It seems inappropriate to put the maximum loss potential on the cover page of a RILA prospectus, but not on the cover page for variable annuities, mutual funds, ETFs, money market funds, stocks, bonds, etc.

    i. A RILA following the S&P 500 is less risky than an S&P 500 fund, but seeing a maximum loss of 90% (for a 10% buffer) may suggest to investors that they are more risky.

    ii. Also, this figure is the worst possible scenario that does not acknowledge how exceedingly rare these losses are.

    iii. The maximum loss figure is also misleading because it ignores insurance company credit risk. If markets go down 75% or more, every counterparty and insurance company will be rendered insolvent, and investors will lose close to everything.

b. It is not clear to me what the following statement means: "the Insurance Company limits the amount an investor can earn on an Index-Linked Option, *the potential for investment loss could be significantly greater than the potential for investment gain*, and an investor could lose a significant amount of money if the Index declines in value."

    Does this mean you are more likely to lose money than gain money, because that is not true. Does it mean the cap may be lower than the floor? If so, can this statement be excluded if the statement is not true or if the product only uses participation rates? Is this any less true than for other types of investments? For instance, if I own a bond that pays 6 percent interest. At the end of the term the best I can earn is 6% interest, but if the company goes bankrupt, I get nothing. So, perhaps this statement should go on the cover page of bond prospectuses as well.

c. Contract Adjustments are not fees. They are RILA features. It is passing along the value of your investment, just like the concept of net asset value. Yes, you could bear investment losses. However, investment losses are not fees. It is akin to a fund's NAV.

d. It is inappropriate to require an illustration of a 5% cap with a 10% buffer (p. 84). I have never seen such a low cap. Fixed annuities and some money market funds promise more than 5%. The lowest I have seen with a 10% buffer over 1 year is 11% and current rates are currently much higher.

e. It strikes me as inappropriate to not have the current rates in the summary prospectuses. Isn't the going rate one of the most important terms of the offering?

f. The form seems to be rather duplicative. For example, it seems as though the maximum loss figures appear to be required in each of the first 6 items. Again, mutual funds require one statement that you can lose money.

4. Also consider,

    a. EDGAR is difficult to navigate. Variable products should be listed under the insurance company, not the separate account. Investors do not know what separate account they own. You do not even require the separate account to be identified in the summary prospectus. The important thing is that the information is filed and liability attaches. After that, EDGAR should be redesigned to make it most usable for investors.

b. XBRL has little value for investment companies and insurance products. I have yet to see a use case. I bet the MIT professor SEC Chairman could not point me to the most expensive variable annuity using XBRL.

c. In a world of summary prospectuses, what are the merits of a statement of additional information? Move it all to the full prospectus.

d. The press suggests that insurance companies wanted this form because they do not want to provide GAAP financial statements, they do not want to show executive compensation, they do not want to provide the proposed ESG disclosures. I see not problem with allowing all insurance products to use statutory financial statements so long as the products are regulated as insurance and the insurance company is subject to state solvency regulation. Most American already own insurance are used to dealing with statutory financial statements. Most insurance shoppers also do not need executive compensation and ESG disclosure. So, allow all insurance products to use STAT financial statements and remove irrelevant requirements.

e. RILA (as well as variable annuities and variable life insurance) prospectuses should be required to disclose to role of state guarantee funds with respect to RILAs. Most states prohibit the mentioning of guarantee funds in marketing materials, but they are material to an investment decision and so should be disclosed in the prospectus. (https://www.nolhga.com/factsandfigures/main.cfm/location/lawdetail/docid/18)

Thank you for your consideration.

Best,

Benji Johnson