

**MEMO# 31518**

December 12, 2018

# Update on Rule 30e-3 Related Disclosure Requirements for Variable Annuity Products

[31518]

December 12, 2018 TO: ICI Members SUBJECTS: Compliance

Disclosure

Operations

Transfer Agency RE: Update on Rule 30e-3 Related Disclosure Requirements for Variable Annuity Products

As you know, the SEC recently adopted final Rule 30e-3 under the Investment Company Act of 1940.[\[1\]](#) ICI members have raised questions regarding the nature of Rule 30-3-related disclosure obligations, if any, that underlying funds for variable insurance products have with respect to contract owners. This memorandum provides background information on Rule 30e-3 and our understanding of those obligations.[\[2\]](#)

## Requirements of Rules 30e-1, 30e-2 and 30e-3

Rule 30e-3 creates an optional “notice and access” method for delivering shareholder reports. Under the rule, generally speaking, a fund may deliver its shareholder reports by making them publicly accessible on a website, free of charge, and sending investors a paper notice of each report’s availability by mail. Investors who prefer to receive the full reports in paper may—at any time—choose that option free of charge. The rule is effective January 1, 2019, and funds may rely on the rule beginning no earlier than January 1, 2021.[\[3\]](#)

The remainder of this memorandum discusses shareholder report delivery requirements applicable to funds underlying variable insurance products.

Rule 30e-1 under the Investment Company Act obligates funds underlying variable insurance products to deliver paper copies of underlying fund shareholder reports to their *record owners* (the insurance company separate accounts and in some cases pension plans). Underlying funds for variable insurance products may choose to rely on Rule 30e-3 to no longer deliver paper copies of shareholder reports to these record owners.

Rule 30e-2 under the Investment Company Act requires the insurance company separate accounts, *not the funds*, to deliver paper copies of underlying fund shareholder reports to contract owners. As a corollary, Rule 30e-3 permits insurance company separate accounts

to use the new notice and access method for delivering shareholder reports to contract owners. The separate accounts that choose to do so must comply with the rule's conditions, including, during the transition period, providing the appropriate notices to contract owners.

Insurance companies issuing variable annuity and variable life insurance contracts registered on Forms N-4 and N-6, respectively, that want to rely on Rule 30e-3 as early as January 1, 2021 must provide the cover page disclosure specified in the Form N-4 and N-6 amendments adopted in connection with Rule 30e-3 on at least two contract prospectuses during the transition period.[\[4\]](#)

The Release adopting Rule 30e-3 specifically describes these delivery obligations as applying to the insurance company separate accounts (as the UITs) and not the underlying funds:

Rule 30e-3 provides funds an optional means of satisfying shareholder report transmission obligations under rule 30e-1 and rule 30e-2 [footnote omitted]. Some commenters recommended, however, that the rule be clarified as to its application to UITs, as UITs and not the underlying funds held by such UITs are the entities with transmission obligations under rule 30e-2 [footnote omitted]. In response to this recommendation, the final rule clarifies, by use of terminology and otherwise, that the operative conditions of rule 30e-3 extend to a UIT seeking to meet its transmission obligations under rule 30e-2.[\[5\]](#)

Accordingly, underlying funds are not required to include a legend on their summary prospectuses, statutory prospectuses, or shareholder reports in order for the insurance company separate account (*i.e.*, the UIT) to rely on Rule 30e-3.

However, although not required to do so, some ICI member firms (including those that are contractually obligated to provide these disclosure documents to the insurance company for delivery to the contract owners) would like to include similar disclosure in summary and statutory prospectuses, as well as the semi-annual and annual shareholder reports for any fund that serves as an investment option under a variable contract. Funds that wish to do so should be aware of the following:

- Under Rule 30e-3, underlying funds for variable insurance funds cannot themselves elect to rely on Rule 30e-3 with respect to the manner of transmission of shareholder reports to contract owners. Only the insurance company separate account can make that election.
- Where the insurance company separate account elects to rely on Rule 30e-3, any fund that serves as an investment option under the insurance company's variable contract does not have any regulatory obligation to provide any of the disclosure specified in the amendments to Rule 498, Form N-1A, Item 1(a)(5), or Item 27(d)(8).[\[6\]](#)
- Such a fund *voluntarily* may include tailored disclosure (described below), on the cover page of the statutory prospectuses, and on the cover page or at the beginning of summary prospectuses, as well as in semi-annual and annual shareholder reports. This includes those firms that are contractually obligated to provide these disclosure documents to the insurance company for delivery to the contract owners.
- Funds that choose to provide the disclosure may tailor it, as appropriate, including to:
  - reflect that the fund itself does not know whether paper copies will be sent to

- each contract owner,
- identify the entity which, in fact, may no longer be sending paper copies of the fund's shareholder reports, the entity that may be sending notices to shareholders when a report is posted, as well as the entity that will be providing instructions for requesting paper copies, and
- specify that such notices will provide the shareholder with the means for obtaining shareholder reports (*i.e.*, a website link to access the report).

We provide below one sample of that tailored disclosure.

Beginning on [date], as permitted by regulations adopted by the Securities and Exchange Commission, you may not be receiving paper copies of the Fund's shareholder reports from the insurance company that offers your contract unless you specifically request paper copies from the insurance company or from your financial intermediary. Instead, the shareholder reports will be made available on a website, and the insurance company will notify you by mail each time a report is posted and provide you with a website link to access the report. Instructions for requesting paper copies will be provided by your insurance company.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may elect to receive shareholder reports and other communications from the insurance company electronically by following the instructions provided by the insurance company.

You may elect to receive all future reports in paper free of charge from the insurance company. You can inform the insurance company that you wish to continue receiving paper copies of your shareholder reports by [insert instructions]. Your election to receive reports in paper will apply to all to all portfolio companies [available under your contract].

Dorothy M. Donohue  
Deputy General Counsel - Securities Regulation

#### **endnotes**

[1] See Optional Internet Availability of Investment Company Shareholder Reports, Release Nos. 33-10506, 34-83380, and IC-33115 (June 5, 2018) ("Release"), *available at* <https://www.sec.gov/rules/final/2018/33-10506.pdf>.

[2] Nothing contained in this memorandum is intended to serve as legal advice. Each investment company, investment company board, and investment adviser should seek the advice of counsel for issues related to its individual circumstances.

[3] The final rule includes a transition period of January 1, 2019 to January 1, 2022 intended to inform investors in advance of the change of transmission method. During the transition period, the earliest that notices may be transmitted to investors in lieu of paper reports is January 1, 2021. In general, funds will be required to provide two years of notice to shareholders before relying on the rule. Therefore, funds that begin providing notice at the start of 2019 will complete the two-year notice period, and may begin relying on the rule on January 1, 2021. In addition, funds that are newly offered during the period of January 1,

2019 through December 31, 2020 may rely on the rule starting January 1, 2021, if they provide notice to shareholders starting with their first public offering. All other funds may not rely on the rule until they have completed the full two-year notice period or until January 1, 2022, whichever comes first. Funds may make these disclosures in their regularly published reports and are not required to otherwise provide disclosure (*i.e.*, through attaching a sticker to any published document).

[4] Form N-4 (variable annuity) and N-6 (variable life) registrants are sometimes referred to as “two-tier” investment company structures. The top tier, which is the separate account established by the insurer and registered with the Commission as a UIT, is itself divided into “subaccounts,” each of which invests in the shares of an underlying portfolio company (*e.g.*, a mutual fund or exchange-traded fund (ETF)) that serves as an investment option under the variable contract. In this structure, the insurer’s separate account, not the variable contract investor, is the legal owner of the underlying fund shares.

[5] Release at pages 35-36.

[6] Some underlying funds may agree to pay the costs of either printing or mailing paper copies of fund reports to contract owners under their participation agreements, but this is unrelated to, and is not a requirement of, Rule 30e-3.