

**MEMO# 32377**

April 9, 2020

# SEC Adopts Variable Insurance Product Summary Prospectus Rule

[32377]

April 9, 2020 TO: ICI Members

Investment Company Directors

Variable Insurance Products Advisory Committee SUBJECTS: Disclosure  
Fees and Expenses

Investment Advisers

Variable Insurance Products RE: SEC Adopts Variable Insurance Product Summary  
Prospectus Rule

The Securities and Exchange Commission recently adopted a new rule and amended others to allow issuers of variable annuity contracts and variable life insurance contracts (together, VIPs) to use a summary prospectus to satisfy their statutory prospectus delivery obligations.<sup>[1]</sup> The approach in the VIP Summary Prospectus Rule is similar to the Commission's approach in Rule 498, the mutual fund summary prospectus rule, but includes several key differences that reflect the unique nature of variable insurance products, as discussed below. The new VIP summary prospectus rules have a compliance date of January 1, 2022<sup>[2]</sup> and largely are consistent with the Commission's proposal, which ICI supported.<sup>[3]</sup>

The elements of the VIP Summary Prospectus Rule most relevant to registered investment companies are:

- *Optional VIP Summary Prospectus and Internet Availability of Statutory Prospectus* — Rule 498A permits the use of two types of summary prospectuses describing the VIP: an initial summary prospectus delivered in hard copy (or electronically if an investor elects) to new investors that includes certain key information about the VIP and an updating summary prospectus to existing investors that includes a summary of any changes to the VIP since the last update, as well as certain information from the initial summary prospectus. Rule 498A requires the VIP statutory prospectus, as well as the contract's statement of additional information (SAI), to be publicly accessible, free of charge, at a website address specified on or hyperlinked in the cover of the summary prospectus.
- *Portfolio Company Appendix and Optional Delivery Method for Portfolio Company Prospectuses* — Rule 498A provides an optional method to satisfy the prospectus delivery obligations of the underlying funds that act as portfolio companies for the

VIP. Under this method, VIP issuers that themselves use summary prospectuses may include certain key information about these portfolio companies in an appendix to the VIP summary prospectus (the Appendix). The rule requires a VIP issuer to make portfolio company summary and statutory prospectuses available online at the website address specified on or hyperlinked in the variable contract summary prospectus. Investors may request and receive those disclosures in paper or electronically at no cost.

- *VIPs No Longer Actively Sold to New Investors* — The Commission withdrew a line of no-action letters under which the SEC staff stated that it would not recommend enforcement action if issuers did not update the variable contract registration statement and deliver updated prospectuses to existing investors for contracts that are no longer offered to new purchasers and have fewer than 5,000 investors. In doing so, the Commission grandfathered the relief for existing discontinued contracts but did not provide any substantively similar forward-looking relief.[\[4\]](#)

Below we provide a brief summary of these aspects of the Adopting Release.

## **I. Optional VIP Summary Prospectus**

Rule 498A permits a VIP issuer the option to provide investors with an initial summary prospectus and updating summary prospectuses. The rule prescribes the content of both types of summary prospectus. The initial summary prospectus must include a cover page and information in the following sections:

- Important Information You Should Consider About the Contract (“Key Information Table”)
- Overview of the Contract
- Standard Death Benefits
- Other Benefits Available Under the Contract
- Buying the Contract
- How Your Contract Can Lapse
- Making Withdrawals: Accessing the Money in Your Contract
- Additional Information About Fees
- Appendix: Investment Options/Portfolio Companies Available Under the Contract[\[5\]](#)

In addition to the initial summary prospectus, VIP issuers relaying on Rule 498A must provide investors with an updating summary prospectus that includes a concise description of certain changes to the contract made after the date of the most recent updating summary prospectus or statutory prospectus that was delivered to investors. These updates include changes to the availability of portfolio companies, changes to the fee table, and a discussion of changes that relate to the Key Information Table, among other changes.[\[6\]](#) The updating summary prospectus also includes certain information from the initial summary prospectus that is relevant to investors considering additional investment decisions.[\[7\]](#)

We discuss the Key Information Table and Appendix sections of the summary prospectus in more detail below.

### **A. Key Information Table**

The Key Information Table of the summary prospectus provides a brief description of key facts about the variable contract in five topic areas: fees and expenses; risks; restrictions; taxes; and conflicts of interest. Specifically, the fees and expenses, risks, and restrictions

sections include information about portfolio companies, as discussed below.

i. *Fees and Expenses*

The Fees and Expenses section of the Key Information Table is designed to alert investors to the charges they will bear for early withdrawals, transaction charges, and ongoing fees and expenses. The Fees and Expenses section provides consolidated information to minimize the need for investors to perform complex calculations to understand the fees they will pay.[\[8\]](#)

The Fees and Expenses section requires Form N-4 registrants to present minimum and maximum annual fees for portfolio companies as a separate ongoing expense. Form N-3 registrants must present that information as annual contract expenses. The minimum annual fee includes the lowest annual portfolio company expense or management fee, and the maximum annual fee includes the highest fees for that fee category.[\[9\]](#)

For Form N-6 registrants, because the costs associated with variable life insurance contracts are largely based on the personal characteristics of the insured, the final rule does not require specific numeric information about the fees covering the cost of insurance and optional benefits, but instead requires a brief statement that investment in a variable life insurance contract is subject to certain ongoing fees and expenses that are based on characteristics of the insured and requires presentation of the minimum and maximum annual fees for the investment options in a tabular format.

ii. *Risks*

The Key Information Table requires VIP issuers to make disclosures about four categories of risk, including risk of loss, risks that could occur if an investor believes a variable annuity is a short-term investment, risks associated with the contract's investment options, and insurance company risks. The category of risks associated with the contract's investment options is intended to focus on the general risk of poor investment performance, as opposed to the details of the specific risks associated with each of the investment options available under the contract.[\[10\]](#)

iii. *Restrictions*

VIP issuers are required to disclose information about those features of a variable contract that have restrictions or limitations. This section of the Key Information Table requires VIP issuers to disclose whether there are any restrictions that may limit the investments that an investor may choose or limitations on the transfer of contract value among portfolio companies. If applicable, the VIP issuer also must disclose that it reserves the right to remove or substitute portfolio companies as investment options.[\[11\]](#) This approach is consistent with ICI's recommendations.

## **B. Portfolio Company Appendix**

The VIP Summary Prospectus Rule requires, largely as proposed, an initial summary prospectus to include an appendix that provides summary information in a tabular form about the portfolio companies or investment options offered under the contract.[\[12\]](#) The Appendix must include information about portfolio companies that are investment options

under the contract (not just those that are “currently offered,” as proposed), and VIP issuers must indicate if investments in any of the portfolio companies offered under the contract are subject to a restriction. The Appendix includes separate columns for each portfolio company’s type or investment objective, the name of the portfolio company and its adviser or subadviser,<sup>[13]</sup> the portfolio company’s expense ratio, and its average annual total returns.<sup>[14]</sup>

Specifically, VIP Summary Prospectus Rule requires the following information in the Appendix about portfolio company expenses and performance:

- The expense ratio currently charged by each portfolio company offered under the contract and whether each portfolio company is subject to an expense reimbursement or fee waiver arrangement. In addition, the rule requires a footnote stating that annual expenses reflect temporary fee reductions, as recommended by ICI.<sup>[15]</sup>
- Whether the VIP charges a fund facilitation fee or platform charge<sup>[16]</sup> for any portfolio company, the portfolio company’s current expenses plus any platform charge, and a footnote indicating the highest level to which any relevant platform charge may be increased.
- Portfolio company performance over 1, 5, and 10-year periods. Although the Commission did not adopt ICI’s recommendation to include returns over the life of the fund for funds in existence for more than 10 years, it acknowledged that such returns would be available in the portfolio company’s own summary prospectus, as part of a layered disclosure approach.

In addition, the Appendix must include the following legends:

- A statement alerting investors that, depending on the optional benefits they choose, they may not be able to invest in all portfolio companies;
- A statement informing investors where and how they can obtain more current portfolio company information, as recommended by ICI, and an internet address to a landing page, toll-free telephone number, and email address that investors could use to obtain portfolio company statutory and summary prospectuses.
- For Form N-4 and N-6 filers, a statement that the expense and performance information reflects fees and expenses of the portfolio companies, but does not reflect the other fees and expenses, such as platform charges.<sup>[17]</sup>

Finally, the updating summary prospectus also must include the Appendix, identical to the requirements for the Appendix in the initial summary prospectus.

## **II. Internet Availability of the VIP Statutory Prospectus**

Under the final rule, a VIP issuer’s current initial summary prospectus, updating summary prospectus, statutory prospectus, and SAI, and, as applicable, the VIP’s most recent annual and semi-annual reports to shareholders must be available online.<sup>[18]</sup> Similar to the Commission’s approach under the mutual fund summary prospectus rule, these online contract documents must be publicly accessible, free of charge, at the website address that the cover page of the summary prospectus specifies, on or before the time that the person relying on the rule provides the summary prospectus to investors.

The website address that the VIP issuer uses must be specific enough to lead investors directly to the required online contract documents, although the website can be a central site with prominent links to each document. Thus, while contract documents may be hosted at multiple locations, for purposes of compliance with the rule, a summary prospectus may

only include a single website address where each of the required online contract documents may be accessed.

The final rule also includes requirements to facilitate investor access to online contract documents, such as linking within the statutory prospectus and SAI and linking between the summary and statutory prospectuses.[\[19\]](#) The rule also requires that persons accessing the website that appears 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.

VIP issuers must also promptly provide their documents to investors who request the information to be sent in paper or electronically, at no cost to the requestor. These provisions parallel provisions in the rule governing the use of mutual fund summary prospectuses.

### **III. Optional Delivery Method for Portfolio Company Prospectuses**

The final rule provides an optional method for satisfying portfolio company prospectus delivery obligations by making portfolio company summary and statutory prospectuses available online,[\[20\]](#) with certain key information about the portfolio companies provided in the contract's summary prospectus as discussed above.[\[21\]](#) This option allows satisfaction of prospectus delivery obligations with respect to a portfolio company if:

- An initial summary prospectus is used for each currently offered contract described under the related registration statement;
- A summary prospectus is used for the portfolio company (only if the portfolio company is registered on Form N-1A); and
- The portfolio company's current summary prospectus, statutory prospectus, SAI, and most recent shareholder reports are posted online under similar posting requirements for the variable contract's summary prospectuses and other documents.[\[22\]](#)

In addition, the rule provides that any communication related to a portfolio company, other than a prospectus permitted or required under Section 10 of the Securities Act of 1933, would not be deemed a prospectus if the above conditions are satisfied.[\[23\]](#)

The required online portfolio company documents must be publicly accessible, free of charge, at the single website address specified on the cover page or beginning of the summary prospectuses for the variable contract. Consistent with ICI's recommendations, the final rule permits flexibility regarding the website where the required online portfolio company documents are posted (and permits the website to be hosted, for example, by a financial intermediary or entity other than the insurer), so long as electronic versions of the required online portfolio company documents (or links to those documents) are available through the same website as the required online contract documents for the variable contract prospectus.[\[24\]](#)

If a portfolio company amends its prospectus between annual updates, the updated prospectus, including any prospectus supplements, must be posted online. Consistent with ICI's recommendations, however, the rule does not separately require delivery of portfolio company prospectus amendments to investors.

### **IV. SEC Withdraws Staff No-Action Relief for Discontinued Contracts**

Currently, pursuant to the "Great-West" line of staff no-action letters, issuers of certain variable contracts that are no longer offered to the public and that have fewer than 5,000

investors (“Discontinued Contracts”),<sup>[25]</sup> may provide alternative disclosures<sup>[26]</sup> to investors in lieu of filing updated registration statements and providing updated prospectuses.

In the Adopting Release, the Commission withdrew these no-action letters<sup>[27]</sup> but conditionally provided grandfathered relief for issuers of contracts that are discontinued as of July 1, 2020 under generally the same conditions as under the “Great-West” line of no-action letters. Under the grandfathered relief, issuers of Discontinued Contracts can opt to provide “modernized alternative disclosures,” consistent with the VIP Summary Prospectus Rule, in lieu of mailing portfolio company disclosure documents to investors. The modernized alternative disclosure method requires that:

- A summary prospectus is used for the portfolio company (if the portfolio company is registered on Form N-1A); and
- The prospectuses, periodic reports, and other disclosure documents for the portfolio company are publicly accessible, free of charge, at the website address specified on the cover page or beginning of annual notice by the VIP issuer and delivered (in paper or electronic format) upon request.<sup>[28]</sup>

The annual notice by the VIP issuer to investors must contain the same information as that required in an updating summary prospectus. Whether using existing or modernized alternative disclosures to provide disclosure about portfolio companies, the VIP issuer must file Form N-CEN, updated audited financial statements, and any annual notice document sent to investors with the Commission through EDGAR.

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#### endnotes

<sup>[1]</sup> *Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts*, Investment Company Act Release No. 33814 (Mar. 11, 2020) (“Adopting Release”), available at <https://www.sec.gov/rules/final/2020/33-10765.pdf>; see also Investment Company Act Release No. 33286 (Oct. 30, 2018), available at <https://www.sec.gov/rules/proposed/2018/33-10569.pdf>. For purposes of this memo, we refer to Rule 498A as the “VIP Summary Prospectus Rule.”

<sup>[2]</sup> The new rules requiring VIP issuers to submit certain specified disclosures in Inline XBRL have a compliance date of January 1, 2023. In addition, the effective date for the Commission’s withdrawal of certain staff no-action letters in the Adopting Release is July 1, 2020.

<sup>[3]</sup> For a summary of ICI’s comment letter to the Commission regarding this rulemaking, see ICI Memorandum No. 31615, available at [https://www.ici.org/my\\_ici/memorandum/memo31615](https://www.ici.org/my_ici/memorandum/memo31615).

[4] The Commission also updated certain disclosure requirements for VIPs under Forms N-3, N-4, and N-6, including requiring VIP issuers to use the Inline XBRL format for filing certain information. In addition, the Adopting Release includes certain amendments to provide greater consistency among the registration forms for variable contracts. Adopting Release at 180-292.

[5] Adopting Release at 33, Table 2.

[6] Adopting Release at 116-117. Because the Appendix to an updating summary prospectus includes updated information about portfolio company expenses and performance, the Commission did not expect changes to portfolio company expenses to be disclosed in the discussion of changes to the contract section in the body of the updating summary prospectus, even in cases where the “Annual Portfolio Company Expenses” table in the prospectus fee table is changed to reflect a new range. Adopting Release at 120. This is consistent with ICI’s recommendations.

[7] Items from the initial summary prospectus that also are included in the updating summary prospectus include, among others, the Appendix, Adopting Release at 113.

[8] However, the initial summary prospectus also must include the fee table that appears in the statutory prospectus, under the heading “Additional Information About Fees.” Adopting Release at 87.

[9] Adopting Release at 51. The Commission also designed a tabular presentation in Forms N-3 and N-4 reflecting the lowest and highest annual cost estimates for the variable contract to provide an illustration for investors. These estimates are based on a \$100,000 investment over a hypothetical 10-year period. Adopting Release at 53-54.

[10] Adopting Release at 58.

[11] Adopting Release at 62-63.

[12] For variable contracts registered on Form N-3, registrants may omit the required Appendix and instead provide more detailed disclosures for the investment options offered under the contract required by Item 19 of amended Form N-3. Item 19 requires narrative disclosure for each investment option regarding its investment objectives and principal investment strategies, and principal risks of investing in the investment option, and a bar chart and table showing the performance of the investment option modeled after the risk/return bar chart and table that Form N-1A currently requires. Adopting Release at 108.

[13] The Commission agreed with ICI’s recommendation that the Appendix should only identify subadvisers “whose actions are likely to impact the fund significantly,” and an instruction should limit the requirement to subadvisers that are responsible for a significant portion of a portfolio company’s net assets, consistent with the approach for mutual funds. Adopting Release at 92. This is consistent with the requirement for mutual fund disclosure under Form N-1A.

[14] For Form N-3 registrants, if the registrant is a multiple class fund, the registrant only needs to disclose expenses and performance for one class. Adopting Release at 101.

[15] Adopting Release at 99. The Commission believed that current expenses will provide more pertinent information to investors than gross expenses in the case of portfolio companies operating pursuant to an expense reimbursement or fee waiver arrangement.

For portfolio companies that are not operating under expense reimbursement or fee waiver arrangements, current expenses will be the same as gross expenses.

[16] The Commission defined “platform charge” as any fee charged by the registrant to make a portfolio company available as an investment option under the contract, and that varies solely on the basis of the portfolio company selected. Adopting Release at 56.

[17] Adopting Release at 107-108. Because insurance charges are already reflected in the expenses and performance of the investment options for Form N-3 registrants, those registrants would provide a statement that the current expenses and performance information reflects contract fees and expenses that are paid by each investor.

[18] Adopting Release at 132-133.

[19] See *also* other requirements for the summary prospectus and online contract documents, Adopting Release at 146.

[20] The Commission noted that delivery of prospectuses for underlying portfolio companies is typically effected by the insurance company rather than the portfolio company but that there is diversity in practice as to whether the insurance company or portfolio company bears the printing and mailing costs. The Commission also noted that VIPs or portfolio companies typically deliver the portfolio company summary prospectus, as opposed to statutory prospectus. Adopting Release at 166.

[21] This optional delivery is available to Form N-4 and Form N-6 registrants but is not available to Form N-3 registrants because they do not have underlying portfolio companies. Adopting Release at 167.

[22] Use of the delivery option is not contingent on every portfolio company itself using a summary prospectus. Rather, the delivery option is available on a portfolio company by portfolio company basis so that a VIP will only be ineligible to use the delivery option as to those portfolio companies that do not use a summary prospectus. Adopting Release at 172.

[23] Adopting Release at 167-168. In addition, the final rule provides that that information contained in the required online portfolio company documents (including a portfolio company’s statutory prospectus, SAI, and shareholder reports) is conveyed to investors for purposes of Securities Act Rule 159 when portfolio company prospectus delivery obligations under section 5(b)(2) of the Securities Act are satisfied pursuant to the optional portfolio company prospectus delivery method. Adopting Release at 176-177. The Commission also amended Form N-14 to provide that a portfolio company prospectus whose delivery obligations were satisfied via the new rule may be incorporated by reference into a filing on Form N-14 without being sent to investors, so long as that portfolio company was listed in the variable contract summary prospectus Appendix at the time the disclosures required by Form N-14 were delivered to investors. Adopting Release at 180.

[24] Adopting Release at 173-175. The website address must be specific enough to lead investors directly to the required online portfolio company documents, although the website can be a central site with prominent links to each document.

[25] See, e.g., *Great-West Life and Annuity Insurance Company*, SEC Staff No-Action Letter (pub. avail. Oct. 23, 1990); *MML Bay State Life Ins. Co.*, SEC Staff No-Action Letter (pub. avail. Apr. 12, 1990); *Transamerica Occidental Life Insurance Co.*, SEC Staff No-Action

Letter (pub. avail. Mar. 16, 1990); *Connecticut Mutual Life Insurance Company*, SEC Staff No-Action Letter (pub. avail. Mar. 7, 1990). The staff of the Division of Investment Management provided notice of all the staff no-action letters that would be withdrawn pursuant to this rulemaking. See *Division of Investment Management Staff Statement Regarding Withdrawal of Staff Letters Related to Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts Rulemaking*, IM-Info-2020-01 (Mar. 2020), available at <https://www.sec.gov/files/im-info-2020-01.pdf>.

[26] “Alternative Disclosures” are comprised of the portfolio companies’ current prospectuses (or summary prospectuses) and any updates thereto, annual and semi-annual reports, proxy materials, and any other periodic reports or other shareholder materials for the portfolio companies; confirmations of transactions in accordance with rule 10b-10 under the Securities Exchange Act of 1934; within 120 days after the close of the fiscal year, updated audited financial statements of the VIP, and in the case of variable life insurance contracts, the depositor’s updated audited financial statements; and at least once a year, a statement of the number of units and values in each investor’s account. Adopting Release at 295-96.

[27] The Commission stated that it is not adopting any form of forward-looking relief for discontinued contracts at this time, although it will continue to consider whether any form of forward-looking relief for discontinued contracts might be appropriate. Adopting Release at 294.

[28] Adopting Release at 303-304. Similarly, a registrant using the modernized alternative disclosure approach must make its financial statements publicly accessible to investors, free of charge, at the website address specified on the cover page or beginning of the notice document and delivered (in paper or electronic format) upon request.