

MEMO# 32420

April 27, 2020

SEC Staff Guidance on Discontinued Variable Insurance Product Contracts

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TO: ICI Members

Variable Insurance Products Advisory Committee SUBJECTS: Disclosure

Variable Insurance Products RE: SEC Staff Guidance on Discontinued Variable Insurance Product Contracts

On April 22, 2020, the staff of the SEC Division of Investment Management issued guidance on how certain variable insurance contracts that are no longer offered to new investors (“discontinued contracts”) can comply with requirements to deliver an updated prospectus to existing investors.[\[1\]](#)

1. Background

As part of the recent rulemaking permitting summary prospectuses for variable insurance products, the SEC withdrew the “Great West” line of staff no-action letters that offered conditional relief for discontinued contract issuers to provide existing investors with alternative disclosures in lieu of providing updated prospectuses.[\[2\]](#) However, in the rulemaking, the SEC essentially grandfathered that relief for contracts with fewer than 5,000 investors that are discontinued as of July 1, 2020, generally on the same conditions as the “Great West” letters.

2. Staff Guidance

In its recent guidance, the Division of Investment Management staff noted that certain discontinued contracts may not meet the conditions of the SEC grandfathered relief as of July 1, 2020, including those contracts that would have more than 5,000 investors on that date. As discussed by the staff, these contracts should meet their obligations to update their registration statement or deliver updated prospectuses to existing investors by May 1, 2021.[\[3\]](#) If, however, the variable contract becomes available for sales to new investors or there is a material change to the variable contract, that staff stated that an issuer would need to update the registration statement for the variable contract and deliver updated prospectuses to existing investors at that time.

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endnotes

[1] See ADI 2020-10 - Filing and Delivery Obligations for Certain Discontinued Variable Insurance Contracts, *available at* <https://www.sec.gov/investment/accounting-and-disclosure-information/adi-2020-10-filing-and-delivery-obligations>.

[2] See ICI Memorandum No. 32377, *available at* https://www.ici.org/my_ici/memorandum/memo32377.

[3] The date of the first annual update subsequent to July 1, 2020.