



Joint Forum
c/o Bank of International Settlements
CH-4002 Basel, Switzerland
October 18, 2013

Re: Comments on *Point of Sale disclosure in the insurance, banking and securities sectors*

The American Council of Life Insurers (“ACLI”)¹ greatly appreciates the opportunity to respond to the Joint Forum’s consultation document, *Point of Sale disclosure in the insurance, banking and securities sector*, which seeks to identify and assess regulatory approaches to point of sale (“POS”) disclosure. The Joint Forum was asked to “identify whether regulatory approaches to POS disclosure need to be further aligned across sectors,” and as a result, developed eight recommendations for regulators who are considering, developing, or modifying POS disclosure regulations.²

We are writing to express our support of the paper’s underlying objective of enhancing consumer understanding through robust disclosure regimes, as well as to outline a few areas where differences in product features may merit careful consideration before prescriptive action is taken regarding cross-sectoral comparability for POS disclosure purposes.

I. ACLI strongly supports Recommendations 4, 6, and 7

At the outset, we wish to note that ACLI keenly supports enhanced consumer decision-making through improved disclosure with short, plain language.³

Recommendation 4: The ACLI supports the principle that consumers should have access to information to make an informed decision to purchase. While the amount of point-of-sale disclosure can vary (as explained below in this letter) when it is provided, we agree with the Recommendation 4 that any POS disclosure be “clear, fair, not misleading and written in a plain language designed to be understandable by the consumer.”⁴

Recommendation 6: We also agree with Recommendation 6, that disclosures “set out key information about a product and may include, as appropriate, links or refer to other information. It should make clear that it does not provide exhaustive information.”⁵ The Insurance Association of Insurance Supervisors Insurance Core Principle 19.5 recognizes that the level of product information in an disclosure (provided in “good time”) may vary, but at a minimum should include insurance-specific details such as premium levels, when insurance coverage begins and ends, a description of the risk covered, and prominent and clear information on significant or unusual exclusions or limitations.⁶ The ability to link or refer to supplementary material is an appropriate method of ensuring that

¹ “The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. ACLI advocates in federal, state and international forums. Its members represent more than 90 percent of the assets and premiums of the U.S. life insurance and annuity industry. In addition to life insurance, annuities and other workplace and individual retirement plans, ACLI members offer long-term care and disability income insurance, and reinsurance. Its public website can be accessed at www.acli.com.”

² The Joint Forum consultative document, *Point of Sale Disclosure in the insurance, banking and securities sectors*, 3 (Aug. 2013) (hereinafter, “*Point of Sale*”)

³ The ACLI has worked with state and federal regulators to create model disclosure regulations and model disclosure forms, including the NAIC Annuity Disclosure Model Regulation which allows consumers to compare fixed, indexed, and variable annuity products.

⁴ *Point of Sale*, pages 3 and 20.

⁵ *Point of Sale*, pages 3 and 21.

⁶ IAIS ICP 19.5.11

consumers have access to additional information without the risk of including an overwhelming amount of text that could dilute critical information.

Recommendation 7: With respect to responsibility for preparing and delivering the disclosure, we believe that recommendation 7 is sensible – regulators should “clearly establish who is responsible for preparing, making available and/or delivering the disclosure document and the document should identify which entity is responsible for its content.”⁷

II. Regulators may wish to carefully examine existing disclosure requirements and individual product features and objectives when considering comparability

The Joint Forum’s mandate is cognizant that differences in sectoral disclosure regimes exist and these differences are not necessarily anti-consumer and may reflect differences in product features. Nevertheless, the *Point of Sale* consultation paper reflects a concern by the Joint Forum that “differences in [disclosure regulation] may contribute to the inability of consumers to properly compare products when deciding to purchase.” Recommendation number 5 seeks to address this concern by requiring POS disclosures to “include the *same type* of information to facilitate *comparison* of competing products”⁸ (emphasis added).

With this in mind, we would like to respectfully explain our concerns with Recommendation 5, which would require POS disclosures to include the “same type” of information. Our primary concern with Recommendation 5 is that there are some products, such as variable life products that are not easily comparable with other collective investment schemes (“CIS”), like mutual funds, and because of that, disclosure for either product may be incomplete if they were required to use identical content requirements.

The Joint Forum was asked to keep “in mind that differences in regulatory approaches can arise from legitimate differences in sectoral regulatory objectives as well as from differences in product features.”⁹ Variable annuities, variable life insurance products and mutual funds are good examples of products with disclosure regimes that reflect legitimate differences in sectoral regulatory objectives and differences in product features and purpose. Consider the example of variable annuities, variable life insurance, and mutual funds. A variable annuity (“VA”) is a long-term financial product that can provide a life-time stream of income. Values accumulate in the variable annuity based on the performance of the underlying investment portfolio. Some VA’s also protect a beneficiary’s interest with life insurance in case the annuity owner dies before annuity payments commence. A variable life insurance (“VLI”) contract provides fundamental death protection with account values correlating to the performance of allocation options in the separate account. Mutual funds, in contrast, do not contain death benefits or a guaranteed stream of income. Each of these products have distinct features that are designed to facilitate distinct objectives, which makes an apples-to-apples comparison very difficult. The same is true regarding the timing of delivery.

The foregoing products demonstrate the difficulty of creating a one-sized fits all disclosure approach. With respect to timing, certain products, like variable life insurance contracts, have unique factors that may warrant flexibility in the approach to the timing of disclosures. For example, the Joint Forum’s *Point of Sale* recommendations for disclosure include cost and fees, which is reasonable – if the products have comparable features and if the issuer can reasonably estimate the fees and costs before the contract is underwritten or issued. Features on some products, like VLI contracts, have significant age, gender and risk classification components in the pricing structure that do not lend themselves to individualized cost computations in a static disclosure. A POS disclosure based on initial information provided by the consumer could be misleading or inaccurate in cases where the customer applies for a different basis than the one in which the contract was issued, because of underwriting issues or contract size limits.

⁷ *Point of Sale*, pages 4 and 21-22.

⁸ *Id.*, pages 20-21.

⁹ *Id.*, page 1.

While some “types” of information are relatively easy to compare across products (upfront costs vs. ongoing services charges) laws restricting the use of certain terminology to particular products hamper direct comparability. As such, the ACLI respectfully encourages the Joint Forum to consider a principles-based approach to comparability in lieu of a prescriptive, one-sized fits all approach to comparability. We think that a less-prescriptive approach to disclosure would ensure that customers receive the key information for each particular product, at the appropriate time.

III. Supplementary material for Annex 3.

Annex 3, *Selected recent and upcoming national or international initiatives on consumer protection* lists initiatives in Italy, Mexico, South Africa, Switzerland and the United States. The section on the United States lists two initiatives (an SEC mutual funds prospectus, 2009; and the NAIC Best Practices and Guidelines for Disclosures, 2012). We respectfully submit the following measures for consideration:

- Federal Rules & Proposals

- o [The Dodd-Frank Act and Wall Street Consumer Protection Reform, Title IX](#) – requires studies on financial literacy and disclosure, and authorizes the SEC to consider harmonizing broker-dealer and investment advisor regulations, which would affect disclosure requirements for a number of products.
 - The Dodd-Frank Act (DFA) empowered the SEC to require broker-dealers and investment advisers, when providing personalized investment advice about securities to retail customers, “to act in the best interest of the customer” without regard to the interest of the broker-dealer or adviser, and such standard must generally be as stringent as that applicable to investment advisers under sections 206(1)-(2) of the Advisers Act. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 913(g)(2), 124 Stat. 1376 (codified at 15 U.S.C. § 80b-11(g) (2010)).
 - The DFA also empowered the SEC to provide a standard of conduct for broker-dealers, when providing personalized investment advice about securities to retail customers that is the same as that applicable to an investment adviser under section 211 of the Advisers Act. § 913(g)(1), 124 Stat. 1376 (codified at 15 U.S.C. § 78o(k)(1) (2010)).
 - The DFA mandated an SEC study evaluating the effectiveness of existing standards of care for broker-dealers and investment advisers regarding personalized investment advice and recommendations about securities to retail customers., Id. § 913(b)(1), 124 Stat. 1376 (codified at 15 U.S.C. § 78o (2010)). The study must also evaluate whether there are “gaps, shortcomings, or overlaps” in such standards that should be addressed. § 913(b)(2), 124 Stat. 1376 (codified at 15 U.S.C. § 78o (2010)).
- o [The Financial Industry Regulatory Authority \(“FINRA”\) Rule 2320 Variable Contracts Issued by Insurers](#)– requires broker-dealers to deliver meaningful, succinct point-of-sale disclosure so consumers can make informed decisions about individual, variable annuities (VAs), notwithstanding the extensive disclosure in the VA prospectus and free look provisions generally provided under state laws.

NAIC Model Regulations (state)

- o [NAIC Annuity Disclosure Model Regulation \(amended in 2011\)](#) – provides standards for disclosure to consumers about annuity contracts to protect consumers and foster consumer education; specifies the method of disclosure, content, etc. The goal was to ensure that purchasers understand basic features of an annuity. If the transaction occurs over the phone then the buyer’s guide must be delivered within 5 days of the annuity purchasers and consumers have up to 15 days to negate the contract without penalty or charge. [**Note: issuers of variable annuities are subject to SEC and FINRA disclosure rules mandating POS disclosures**]

- **NAIC Buyers Guide for Annuities** - explains product features, costs, and facts to consumers in plain-language in a condensed document. The Buyers Guide is delivered before or at the point of sale if the buyer and broker-dealer meet in person; same delivery requirements as the NAIC Annuity Disclosure Model Regulation. The Buyers Guide was developed by regulators, industry and consumer representatives.
- **[NAIC Variable Life Insurance Model Regulation \(NAIC 270-1\)](#)** – delivered at the Point of Sale (or before) and includes description of product, including the benefits and risks; historical returns, the investment policy, information about fees and charges, and an illustrations of benefits payable. *[Companies that issue registered variable life insurance contracts are exempt from this rule because they are already required by the Securities and Exchange Act of 1934 and Securities Act of 1933 to deliver point-of-sale prospectuses and disclosures to consumers.]*

Sincerely,

A handwritten signature in black ink that reads "Mariana Gomez". The signature is written in a cursive, flowing style.

Mariana Gomez
Counsel
American Council for Life Insurers