

## **ILVA Subgroup response to comments on Initial Draft ILVA standards (Public Call: May 8, 2023)**

### **Comments on Scope and Definitions:**

The definitions were removed, and a drafting note related to the Scope was added to make clear that the scope is not limited to the referenced crediting elements and limitations.

### **IRI comment on effective date and refiling of prior approved contracts:**

No ILVA forms have been approved by the Compact to date. All ILVA filings submitted under the new standard would only be applicable to new issues. The effective date of the standard will in part be dependent upon the date of adoption of the Standard by the Commission.

### **Use of term “subaccount” in definitions of Non-variable, Variable, Index Linked Variable**

Replaced “subaccount” with “account value”.

### **IRI comment on inclusion of traditional variable and fixed account options in the standard**

Consistent with the variable standard which include standards for both variable/separate account and non-variable/general account provisions, the draft includes standards for each of the core types of annuity account options that may be included in a Compact ILVA contract. This assures that the standard is complete and avoids any potential conflict between the core standards (ILVA, non-variable and variable annuity standards).

### **Definition of Index**

The definition was revised based on the Compact MVA standard definition, MD and OR definitions of index to require that any benchmark used must be well-established, publicly available, and external to the company.

### **1(A)(8) use of term “plan”**

Removed this entire provision. It is not in the variable Compact standard and currently the Compact requires a separate spec page for surrender charge and no surrender charge products but does allow benefits and features to be variable on the spec page including inclusion or exclusion.

### **1(B)(1) Trading costs, MVA and other methodologies**

With respect to a specific AG 54 reference, the AG allows for significant state discretion. The Compact standards must be uniform and well defined for objective implementation and product approval. Therefore, the draft standard includes specific requirements applicable to ILVAs. Proposed revisions to the draft standard include:

- 1) **Trading Cost**-removed 10bp maximum and added a requirement to justify the cost instead.
- 2) The **MVA** requirement was revised to allow the option to apply an MVA. The intent is to allow products to include an MVA in the determination of the fixed income asset proxy component of the hypothetical portfolio value. If the fixed income asset proxy is not adjusted to a market value, then an MVA may be applied to the Strategy Value subject to the Compact’s MVA standard applicable to separate account products.

July 11, 2023

3) **Permitting interim value methodologies other than the hypothetical portfolio methodology (material consistency).** The draft limits products to those that use a hypothetical portfolio approach to determining interim values. Some interim value methodologies are not based on the market value of assets consistent with the hypothetical portfolio approach (such as the pro-rata methodologies). However, states may allow ILVAs to be issued in their states that develop interim values using methodologies other than the hypothetical portfolio methodology. Although AG 54 allows other methodologies that are determined to be materially consistent with the hypothetical portfolio methodology, material consistency is without objective definition. Because Compact standards must be uniform and well defined for objective implementation and product approval, products that determine interim values using other methodologies will need to be specifically permitted in the standard. Whether (or which) other methodologies will be permitted in the Compact standard will be brought to the full Compact Commission for a determination.

1(g)(ii) was revised to remove “materially” to make clear that the intent is that Interim Values be consistent with the Hypothetical Portfolio methodology. A drafting note was added to make clear that this differs from the materially consistent provision in AG 54.

#### **Explicit reference to AG 54**

Some key elements of the AG 54 are subject to state discretion and Compact standards must be uniform and well defined for objective implementation and product approval. An ILVA filed with the Compact would not be subject to AG 54, but rather to the applicable provisions prescribed in the standard.

#### **1(B)(1)(f) and related Drafting Note regarding Application of Section 7 of Model 250 and inclusion of MVA**

Clarified that Section 7B is not applicable to ILVAs and clarified that if the market value of the fixed income asset proxy is used to develop interim values, the MVA is to be included in the net investment return. If the MVA is applied to the strategy value, then the Compact MVA standard for separate account products is applicable.

#### **1(B)(1)(g)(iii)(Testing “any reasonable scenario” in certifying that IVs provide equity**

“any reasonable scenario” was revised to “any realistic scenario” for clarity and a drafting note was added to provide guidance on what constitutes “any realistic scenario” for purposes of certifying to equity between contract holder and company. To the extent that a realistic scenario fails to provide equity, then the actuary cannot make the certification and the product will not be approved under the standard.

#### **1(B)(1)(g)(v) Inconsistency in provision regarding different valuation techniques**

Revised for consistency with AG 54

#### **1(B)(1)(g)(vi) value relative to non-variable annuity**

The subgroup agrees with the commenters and this section was deleted.

#### **1(C)(3)(g), 1(C)(9), 3(A)3, 3G, 3H, 3K Index changes and nonguaranteed crediting elements**

The requirement to file for approval each index that may be offered is consistent with the current life and annuity index standard and therefore no change is made. Index and crediting elements are allowed to be made variable on the specification page with ranges defined in the statement of variability (SOV). Revisions to any of the ranges require filing and the Compact has developed a more streamlined filing approach for these types of

July 11, 2023

revisions with Supporting Documentation Update (SDU) filings. In addition, an element that was not shown as a variable on the specification page in a prior filing may be changed to a variable using an SDU filing.

The standards are currently applied such that an approved index may be offered on new and in force contracts and with respect to non-guaranteed elements, as long as the crediting element falls within the filed range, then no filing is required. For example, if the range for the buffer is -5% to -15%, the company can issue products with any guaranteed minimum buffer within that range without filing. However, if the company wants to start issuing contracts with a -20% buffer, a filing to revise the range would be required. The company cannot revise a guaranteed minimum buffer shown on a specification page on an in-force contract, but the currently offered buffer can be changed without approval, as long as the buffer is no lower than the minimum guaranteed buffer. In this case the current buffer is a non-guaranteed element while the guaranteed minimum buffer range is the guaranteed element.

Compact standards allow index strategies/features to be provided by rider or endorsement/amendment.

Examples of filing requirements when a new strategy is filed for approval:

- 1) If the base contract specification page shows the strategies as variable, the specification page would not need to be modified, but a revised SOV for the specification page may be required depending on the level of detail in the SOV regarding index riders:
  - a) If the SOV lists the specific index strategies, then a revised SOV must be filed and include the new index strategy rider variability;
  - b) If the SOV states something to the effect that “approved riders will be added here” then a revised SOV is not required to be filed.
- 2) To the extent that index strategy elements are included on the base contract specifications page, a revised base contract SOV would need to be filed to include the range of variability for those elements for the new index strategy.

With respect to discontinuation of an index, Section 3K allows the company to substitute another index for in force contracts to address discontinuation or substantial changes to an index during an index strategy term. This does not prohibit discontinuing the availability of an index or index strategy at the end of Index Strategy terms or from no longer making an index strategy or index available for new issues. Any change to an index (discontinuation, addition, or name change) requires a filing that can be handled as an SDU filing.

**1(C)(5) fixed typo (it should have stated “acceptable” consistent with the variable standard)**

**2(A)(9) ILVA specific cover page disclosures**

Although the disclosures in this provision may be in the prospectus, no revision was made to this provision since:

- 1) The prospectus is a federal requirement and states don’t necessarily know or have any say over what is covered within a prospectus;
- 2) Some state laws have specific disclosure requirements for variable annuities; and
- 3) The disclosures are for consumer protection, which is the primary role of state regulation.

**3(C) and 3(U) allow restrictions on assignments and ownership changes due to Rule 12h-7**

*§ 240.12h-7 Exemption for issuers of securities that are subject to insurance regulation.*

July 11, 2023

*An issuer shall be exempt from the duty under section 15(d) of the Act (15 U.S.C. 78o(d)) to file reports required by section 13(a) of the Act (15 U.S.C. 78m(a)) with respect to securities registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.), provided that:*

*(a) The issuer is a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State;*

*(b) The securities do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary State of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction;*

*(c) The issuer files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of the issuer's domiciliary State;*

*(d) The securities are not listed, traded, or quoted on an exchange, alternative trading system (as defined in § 242.300(a) of this chapter), inter-dealer quotation system (as defined in § 240.15c2-11(e)(2)), electronic communications network, or any other similar system, network, or publication for trading or quoting;*

*(e) The issuer takes steps reasonably designed to ensure that a trading market for the securities does not develop, including, except to the extent prohibited by the law of any State or by action of the insurance commissioner, bank commissioner, or any agency or officer performing like functions of any State, requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis; and*

*(f) The prospectus for the securities contains a statement indicating that the issuer is relying on the exemption provided by this rule.*

No change is proposed at this point. Assignment provisions are uniform across standards and assignment and ownership changes are important consumer protections.

However, the subgroup is seeking additional information regarding the rationale for the restriction:

- 1) Why is it important for ILVAs, specifically?
- 2) What is involved in reporting requirements that would be important enough to take away consumers' right to assign or change ownership of their property?
- 3) The assignment and ownership sections limit any restriction except where required to meet applicable laws or regulations. Why wouldn't the limitation on assignment and ownership changes in the standard meet the exception in (e) of the rule.

**3(H)(3) comment requesting that contract value details to be in prospectus instead of insurance contract**

No revision was made to the provision for reasons similar to the discussion above on the ILVA cover page disclosures. States don't control what is in the prospectus and do not enforce prospectus requirements. The prospectus is not part of the entire contract under state insurance laws. In addition, insurance contracts are given weight in a lawsuit, and it is unclear how much information, if any, in a prospectus is taken into

July 11, 2023

consideration. Having these disclosures in the insurance contract is important for consumer protection and for state enforcement.

### **Section AA applicability to ILVA products**

Section AA as drafted is only intended to be applicable to unitized separate account products, therefore this Section does not apply to ILVA products. In addition, the draft standard does not restrict how ILVA contracts are funded (general or separate account). The Separate Accounts provision at the beginning of the standard is the only applicable requirement.

### **GLB:**

The GLB compact standards allow the initial benefit base to be either premium or account value and allow for increases or decreases including decreases based on change to the account value or an external index subject to a floor on the benefit base of premiums paid less withdrawals. This benefit base requirement is the same for both variable and non-variable annuities.

The subgroup needs clarification regarding what exactly is meant by “GLB riders without a benefit base”.

- 1) What is the base for the GLB benefits if there is no benefit base?
- 2) Why is it considered important to remove/change the GLB benefit base for ILVA products in particular (i.e. as compared to variable annuities)?

### **Application standard acknowledgement**

Retained this provision. The subgroup agreed that if the information has been disclosed to the consumer, including disclosure in a prospectus, then the company can meet the acknowledgement.