



September 7, 2023

Submitted electronically to comments@insurancecompact.org

ILVA Subgroup of the Product Standards Committee

Re: *Insurance Compact's ILVA Standard – Discussion Draft 07/2023*

Dear ILVA Subgroup:

On behalf of our members, the Insured Retirement Institute (“IRI”)¹ appreciates the opportunity to comment on the second exposure draft of the index-linked variable annuity uniform standard (“Standard”) put forth by the Subgroup. We continue to support the development and adoption of a workable uniform standard for index-linked variable annuities (“ILVAs”)² to enable our insurance company members to submit product filings for review and approval of ILVAs through the IIPRC. We appreciate the work of the Subgroup to date, including the most recent updates in response to comments submitted in May. However, we continue to have some significant concerns, and we respectfully offer the comments and recommendations set forth below for consideration by the Subgroup.

- 1) **New Application Standard Provision:** Our members continue to believe that the new provision in the application standard would only cause confusion and is ultimately unnecessary. As discussed in our May 5, 2023, comment letter, all annuity recommendations and sales must already comply with applicable federal and state standard of conduct requirements, including the best interest standard now imposed under NAIC Model 275³ and the SEC’s Regulation Best Interest. Under these rules, producers are required to act in the consumer’s best interest when recommending annuities. Among other things, this means that a producer must have a reasonable basis to believe that a recommended annuity effectively addresses the consumer’s financial situation, needs, and objectives, and that the consumer is informed of various key features of the product.

Second, ILVAs are treated as securities under the federal securities laws, and therefore must be registered with the SEC and offered in compliance with applicable SEC rules. As required by the Registration for Index-Linked Annuities Act of 2022 (which was enacted by Congress as part of the

¹ IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks, and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., the top 10 distributors of annuities ranked by assets under management and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

IRI is an active member of the Industry Advisory Council of the Interstate Insurance Product Regulation Commission (the “IIPRC”).

² ILVAs are also commonly referred to by IRI and our members as registered index-linked annuities, or RILAs.

³ To date, Model 275 has been adopted without substantive deviations in 36 states, and proposals to adopt Model 275 are actively pending or under development in many of the remaining states.

Consolidated Appropriations Act, 2023), the SEC is required to adopt a new registration statement tailored specifically to ILVAs by mid-2024. Notably, all SEC registration statements include a product prospectus that must be delivered to purchasers and prospective purchasers. The prospectus provides detailed information, such as fees and product fees, that consumers may need to make an informed decision about whether to purchase the product.

The Subgroup's response to commenters on this issue simply states that "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." However, this issue is not that straightforward. While the prospectus provides detailed information to the consumer, such as fees and product features, there is no product comparison provided to the consumer that would include comparison of a ILVA strategy with a non-variable indexed annuity strategy and a variable annuity. In fact, the SEC may not even allow inclusion of a comparison of these three products within an ILVA prospectus.

Given the existing best interest requirements and the product information that needs to be disclosed to the consumers, we believe that consumers receive adequate disclosure and product information to make an informed purchase decision. Requiring inclusion of comparison between different product types in the application will provide no additional benefit to consumers and is far more likely to create unnecessary confusion by presenting information about products that the producer may not be authorized to sell or that the producer may have determined are not in the consumer's best interest. We'd also note that similar comparisons are not required for other annuities.

For the reasons stated above, we urge the Subgroup to remove this requirement from the application standard.

- 2) **Permitting Other Interim Value Methodologies:** IRI supports a Standard that aligns with Actuarial Guideline 54 ("AG 54") by allowing other methodologies that are determined to be materially consistent with the hypothetical portfolio methodology. We believe that a variety of products in the marketplace promotes consumer choice and allows consumers to select the product that is the right fit for their financial goals. For example, a consumer might prefer an interim value methodology that is simpler to calculate and more transparent. These factors may be more important to some consumers, and we think the Standard should take this into account. Without a Standard that allows such products, availability, along with consumer choice, would decrease.

As such, we request that Section B.(1)(g)(iii) to be revised as follows: *"The contractually defined Interim Values are **materially** consistent with the Interim Values **that would be** produced using the Hypothetical Portfolio methodology for each combination of Index Strategy and Index Strategy Term over the Index Strategy Term less a provision for the Trading Costs."*

This component is important for a standard that will work for a broad number of companies, and we respectfully request that the Subgroup add this language back into the draft. We acknowledge the concern about ensuring that the Standard is well-defined so that it can be appropriately implemented, however, we think this issue could be addressed through requiring either actuarial demonstration or certification when filing. We're committed to working with the Subgroup and the Compact to identify how this could be accomplished, and we are open to other language that would address this while also allowing for other methodologies that are materially consistent with the hypothetical portfolio methodology.

- 3) **Permitting An Additional Methodology for the Fixed Income Asset Proxy Calculation:** IRI recommends that an additional methodology be permitted when determining the market value of the Fixed Income Asset Proxy. Several companies use a fair value approach for the entire interim value (the Derivative Asset Proxy and the Fixed Income Asset Proxy) where appropriate market parameters are used as inputs for the valuation, and this appears to be consistent with the drafting note at the top of page 3 of AG 54. As such, we believe it would be appropriate to explicitly permit use of a market-based approach to valuing the Fixed Income Asset Proxy. This would make the interim value consistent with the market of the hypothetical asset supporting the ILVA and more closely align it with a variable annuity. We recommend that the Subgroup consider the following revised language in Section B.(1)(d)(vii)(3):

3. The market value of the Fixed Income Asset Proxy

i. may be determined using a fair value methodology that must produce an initial market value of the Fixed Income Asset Proxy equal to the Index Strategy Base minus the Derivative Asset Proxy Value; or

ii. may be determined using a fair value methodology of the Fixed Income Asset Proxy using an appropriate broad market based curve that is consistent with the overall credit the underlying fixed income portfolio supporting the liability; or

iii. is its book value using the yield specified in 2. above adjusted using an MVA appropriate for the maturity of the fixed income assets supporting the ILVA;...

- 4) **Consistency with SEC Regulations:** IRI strongly supports the comments of the American Council of Life Insurers (“ACLI”) and the Committee of Annuity Insurers (“CAI”) regarding the importance of revisions to the Assignment (Section 3.C) and Ownership (Section 3.U) provisions of the draft Standard to include a provision or drafting note that expressly allows a company to restrict assignments if it is relying on Rule 12h-7 under the Securities Exchange Act of 1934 (1934 Act). Most insurers issuing ILVAs rely on Rule 12h-7, and we expect that when the SEC adopts a new registration form in 2024, one of the conditions for use of that new form may be reliance on Rule 12h-7. Insurers need the exemption provided by Rule 12h-7 from the burdensome and irrelevant periodic reporting requirements under the 1934 Act that generally apply to public companies. A failure to allow a provision in ILVA policy forms requiring written notice to, and acceptance by, the insurer prior to any assignment or other transfer of the securities, and reserving the right to refuse any assignment or other transfers at any time on a non-discriminatory basis, would force insurers to either continue to file their ILVA policy forms on a state by state basis, or potentially forego the reporting exemption that the SEC has deemed appropriate after a thorough rulemaking process.

On behalf of IRI and our members, thank you again for the opportunity to provide these comments. We would be happy to discuss further with you and look forward to continued collaboration and partnership with the Subgroup.

Sincerely,

Sarah E. Wood

Sarah Wood
Director, State Policy & Regulatory Affairs

Insured Retirement Institute
swood@irionline.org