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SEC PROPOSES SUMMARY PROSPECTUS FOR VARIABLE INSURANCE PRODUCTS

More than a decade after doing so for mutual funds, the SEC has proposed disclosure reforms for life insurance companies issuing variable annuities and variable life insurance. The key proposal is a summary prospectus that could facilitate decision-making for investors, boost sales for life insurance companies, and increase assets under management for mutual fund investment advisers. The author describes the proposal in the context of the SEC's checkered history of regulating variable insurance products.

By Gary O. Cohen *

The summary prospectus proposal of the U.S. Securities and Exchange Commission permits life insurance companies issuing variable annuity contracts (“variable annuities”) and variable life insurance policies (together, “variable insurance products” or “contracts”) to provide offerees with a brief disclosure document backed by electronic access to a full statutory prospectus available on the life insurance company’s website.

The proposal can be viewed, in a narrow sense, as a technical fix aligning the SEC’s regulation of variable insurance products with that of mutual funds in light of developing digital technology. However, the historical circumstances are such that the proposal can be viewed as a troubling reminder that the SEC has historically placed variable insurance products on the administrative back burner.

The SEC, in the 1950s and 1960s, fought tooth and nail to regulate variable annuities, winning two cases

against life insurance companies in the Supreme Court¹ and a third case in the Third Circuit.² In the 1970s, the SEC found itself enmeshed in seven years of administrative proceedings and litigation in determining the degree of regulation to assert over variable life insurance.³

¹ The Court held, in *SEC v. Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959), and *SEC v. United Benefit Life Ins. Co.*, 387 U.S. 202 (1967), that variable annuities gave rise to contract interests registerable with the SEC as securities under the Securities Act of 1933.

² The Court held, in *Prudential Ins. Co. v. SEC*, 326 F.2d 383 (3d Cir. 1964), that a life insurance company separate account is an investment company registerable with the SEC under the Investment Company Act of 1940.

³ Notice of and Order for Proceeding with Respect to Petition for Issuance and Amendment of Rules Requesting Exemption of Certain Variable Life Insurance Contracts and Their Issuers

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