# Committee on Government Relations

Steve Kolocotronis, Fidelity

SVIA

October 13, 2014

# Committee Membership

| Committee on Government Relations | |
|---|---|
| Chair: Steve Kolocotronis, Fidelity Investments | |
| Tony Camp, Voya Financial | James King, Prudential Financial |
| Sean Cassidy, Voya Financial | Robert Madore, T. Rowe Price Associates Inc. |
| Andrew Cohen, New York Life Investment Management | Sumy McEleney, Voya Financial |
| Joe Fazzino, United Technologies Corporation | James McKay, Columbia Management Asset Advisers |
| Robert Ferencz, Sidley Austin, LLP | Greg Miller-Breetz, Transamerica Stable Value Solutions |
| Nick Gage, Galliard | Jessica Mohan, Bank of Tokyo-Mitsubishi UFJ |
| Bill Gardner, Morley | Helen Napoli, New York Life Investment Management |
| Susan Graef, The Vanguard Group | Marijn Smit, Transamerica |
| Aruna Hobbs, MassMutual | William Thum, The Vanguard Group |
| Jeffrey Jakubiak, Valerian Capital | |

# Government Relations Issues

- SEC Money Market Reform
- GAO Study of QDIAs
- NAIC Proposal on Separate Accounts
- CFTC-SEC Stable Value Study

# SEC Money Market Reform

- Effective date October 16, 2016
  - Requires institutional funds to use floating NAV
    - Rounding to the fourth decimal place
  - DC-participant directed money market funds are considered retail & have constant NAV
  - Constant NAV:
    - Retail funds
    - Governmental money market funds
  - Potential imposition of gates and fees

# GAO Study of QDIAs

- Governmental Accountability Office, which is an independent research body was asked by retiring Congressman George Miller (CA-D) to study QDIAs
- Study is broad-ranging and reviews all QDIAs, asks fiduciary questions about selection, monitoring, as well as participant information including benchmarks, performance, fees
- GAO interviewing organizations now
  - SVIA interview on September 4
- GAO will brief Congressman Miller before the end of 2014
- GAO will survey plan sponsors before the end of 2014
- Findings will be presented in a report at the end of 2015

# GAO Study of QDIAs

- Including stable value gives plan sponsors a principal-preservation investment choice if sponsors determine a conservative safe harbor default is needed
  - Offers competitive risk-adjusted returns compared to the three current QDIAs
  - Most appropriate for risk adverse participants such as those who need positive savings and investment experience to continue in DC plans, short-tenured plan participants, high turnover plan participants, and those closest to retirement age, as well as those in retirement
- Fulfills the mandate of the Pension Protection Act of 2006
  - Section 405 (c )(5)(A) directs the Department to provide guidance on the appropriateness of designating default investments "that include a mix of asset classes consistent with *capital preservation or long term capital appreciation*, or a blend of both"
  - Can be achieved by eliminating the first 120 days limitation for capital preservation product participation[1] from the existing QDIA safe harbor regulations

# GAO Study of QDIAs

| GAO QDIA Working Group | GAO Study of QDIA Interview |
|---|---|
| Bradie Barr, Transamerica | Brett Gorman, PIMCO |
| Le Ann Bickel, Invesco | James King, Prudential |
| Tony Camp, Voya Financial | Steve LeLaurin, Invesco |
| Brett Gorman, PIMCO | Marc Magnoli, AIG |
| James King, Prudential | Gina Mitchell, SVIA |
| Steve Kolocotronis, Fidelity | Marijn Smit, Transamerica |
| Steve LeLaurin, Invesco | |
| Marc Magnoli, AIG | |
| Tom Manente, Voya Financial | |
| Gina Mitchell, SVIA | |
| Marijn Smit, Transamerica | |

# NAIC on Separate Accounts

## Working Group:

Jim King, Prudential

Aruna Hobbs, MassMutual and Chair, Working Group

Steve Kolocotronis, Fidelity

Helen Napoli, NYLIM

Phil Maffei, TIAA-CREF

Bob Madore, T.Rowe Price

Tony Camp, Voya Financial

Gina Mitchell, SVIA

- Supports preservation of the insulation status of stable value separate account contracts
- NAIC Criteria for preservation of insulation status in Exposure Draft was wrong
- Criteria for preservation should be based on principles that directly address the specific concern raised by the Life Actuarial Task Force (LATF) in its September 6, 2011 report, namely the creation of a preferential class of policyholders by the use of insulated separate accounts

Principles include:

- Adequate compensation to the general account for any guarantees provided by the general account as a backstop after all separate account assets are exhausted,
- Maintenance of adequate reserves outside of the insulated separate account to support such guarantees, and
- A comprehensive state regulatory regime for insulated separate account products, which, among other things, could include a reserve requirement, an actuarial opinion requirement and an annual certification requirement.

# 408(b)(2) regulations

- Steve LeLaurin, Invesco
- LeAnn Bickel, Invesco
- Nick Gage, Galliard
- Jane Marie Petty, Galliard
- Sue Graef, Vanguard
- Aruna Hobbs, MassMutual

# CFTC-SEC Stable Value Study

- Section 719(d)(2) defines SVC as:

  "any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other state or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan…subject to participant direction, an eligible deferred compensation plan…that is maintained by an eligible employer…, an arrangement described in section 403(b) of the Code, or a qualified tuition program (as defined in section 529 of such code)."

# CFTC-SEC Stable Value Study

- SVCs shall not be considered swaps until the CFTC-SEC determines by regulation:
  - That SVCs fall within the definition of a swap; and
  - Whether an exemption from regulation is appropriate and in the public interest

- Until the effective date of such regulations, and notwithstanding any other provisions of this title, the requirements of this title shall not apply to SVCs

- CFTC-SEC has until October 21, 2011 to conduct a study to determine whether SVCs fall within swap definition
  - No penalty on CFTC-SEC or SVFs/SVCs if deadline is missed

# CFTC-SEC Actions on Swaps/SVCs

- May 23, 2011
  - CFTC-SEC proposed rules defining swaps
  - Over 300 pages
- August 18, 2011
  - CFTC-SEC release RFI on stable value
  - 29 questions
- July 9, 2012
  - CFTC-SEC issue final rules defining swaps
  - Over 600 pages
  - Footnote 4 states that the final regulations are exclusive of SVCs
  - SVCs are not affected by the final rule until:
    - Determination is made if SVCs are or are not swaps
    - If determination is made SVCs are swaps then the Commissions must also decide if an exemption from regulation as a swap is in the public interest
- August 13, 2012
  - CFTC-SEC request additional comments on RFI since swap/derivative definition was finalized
- In the meantime
  - Nothing changes:
    - Current stable value contracts are not swaps
    - Potential regulation and their application are prospective

# Thematic Approach to 2011 RFI

- Thematic approach to answering the 29 questions
  - SVIA platform:
    - Is SVC a swap
    - How does SVF/SVC work
    - Risks
    - Regulation/oversight
    - CFTC-SEC regulatory scenarios

# Thematic Approach to 2011 RFI

- SVCs do not fall within the swap definition
- Should the Commissions conclude otherwise for whatever reason, it is in the public interest to exempt SVCs from regulation as swaps
  - SVCs are sufficiently regulated
    - SVC regulation:
      - Insurance
      - Bank
      - ERISA
  - SVCs/SVFs do not pose systemic risk
  - Preserve SVFs/SVCs for the 25 million plan participants who have invested $540 billion and rely upon SVFs to achieve their retirement saving and investment goals, and provide income in retirement
    - Exempting SVCs will assure that plan participants will have SVFs as
      - Conservative option with superior returns than MMFs
      - Diversification benefits that permit participants to achieve their risk tolerance in asset allocation
      - Access to SVFs/SVCs
      - SVFs are necessary option in times of uncertainty, aging population, diversification to achieve individual plan participants retirement savings and income goals
- SVIA-ABA-Financial Services Roundtable response is the “go-to” document for the Commissions and staff on stable value

# Thematic Approach to RFI

| Is SVC a swap | How does SVF/SVC work | Risks | Regulation/Oversight | CFTC-SEC regulatory scenarios |
|---|---|---|---|---|
| Are SVC swaps? (Q1) | What are the different types of SVCs? (Q8) | How have SVFs and SVCs performed during the recent financial crisis? What about SVC fees? (Q17) | How do SVCs and SVFs work including regulatory oversight? (Q9) | What are the consequences if SVCs are not deemed swaps? Are deemed swaps without an exemption? (Q7) |
| Do SVCs have an underlying reference asset? (Q5) | How do SVCs and SVFs work including regulatory oversight? (Q9) | What are benefits/risks of SVCs for issuers? How are risks mitigated? (Q11) | What disclosure do SVFs make to investors? Are they adequate? (Q23) | If SVCs are swaps, how should the Commissions regulate them? (Q27) |
| What characteristics distinguish SVCs from swaps? (Q2) | What are SVC termination provisions? (Q10) | What are the benefits/risks for SVF investors? (Q12) | What financial and regulatory protections exist to ensure that SVC issuers will meet their obligations? (Q24) | If SVCs are swaps and the Commissions provide an exemption, should the exemption be limited in any way? (Q28) |
| What reasons can be provided to exempt SVCs from swap definition? (Q6) | What is immunization? Why is this used? (Q13) | Do investors have incentives to make a run on SVF when MV is less than CV? How is this risk addressed? (Q18) | Are SVC issuers limited to state-regulated insurance companies and/or federally- or state-regulated banks? Are there barriers to entry for non-regulated entities? (Q25) | If SVCs are swaps and are not exempted, what is the impact to SVF investors? Existing SVFs? (Q29) |
| Are all SVCs under Dodd-Frank's review as swaps? (Q3) | What are employer-initiated events and why are they excluded from SVCs? (Q14) | How do you assess the risk of a run on a SVF? How effective are VaR models? What is most effective? (Q19) | | |
| Are proposed rules and guidance sufficient in evaluating if SVCs are swaps? (Q4) | What are pull to par provisions? Why is this used? (Q16) | What is the impact of credit cyclicality/financial distress on SVC issuers and impact on SVFs? (Q20) | | |
| | What is SVF manager's role? (Q26) | Do SVCs pose systemic risks? What happens if SVC issuer fails? (Q21) | | |
| | Why do SVF managers infuse capital into their SVFs? (Q15) | Are their systemic risks with SVC issuers and their institutions? (Q22) | | |

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# Approach to 2012 RFI

- Focus was twofold
  - Used criteria for insurance exemption to inform comments
  - Demonstrated that stable value contracts could not be regulated as swaps and explained why this was not possible

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