Committee on Government Relations

Steve Kolocotronis, Fidelity

April 27, 2014

Committee Membership

Committee on Government Relations	
Chair: Steve Kolocotronis, Fidelity Investments	
Tony Camp, ING	Marla Kreindler, Morgan, Lewis & Bockius LLP
Sean Cassidy, ING	Robert Madore, T. Rowe Price Associates Inc.
Andrew Cohen, New York Life Investment Management	Sumy McEleney, ING
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
Susan Graef, The Vanguard Group	Marijn Smit, Transamerica Stable Value Solutions
Brian Haendiges, MassMutual	Tim Stumpff, Morley Financial Services
Aruna Hobbs, New York Life Investment Management	William Thum, The Vanguard Group
Jeffrey Jakubiak, Valerian Capital	Al Turco, McElroy, Deutsch, Mulvaney & Carpenter
James King, Prudential Financial	

Government Relations Issues

- Regulation of Constant NAV Funds
- NAIC Proposal on Separate Accounts
- 408(b)(2) DOL Fee and Expense Disclosures
- CFTC-SEC Stable Value Study
- MyRA Accounts

NAIC on Separate Accounts

Working Group:

Jim King, Prudential

Aruna Hobbs, NY Life
and Chair, Working Group

Steve Kolocotronis, Fidelity

Helen Napoli, NY Life

Phil Maffei, TIAA-CREF

Bob Madore, T.Rowe Price

Tony Camp, ING

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, NYLife

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)		

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