

October 12, 2007

Neil Mohindra
Acting Policy Manager
Joint Forum Project Officer
5160 Yonge St.
Box 85, 17th floor
North York, ON
M2N 6L9

Dear Sir:

Re: Comments on Proposed Framework 81-406, Point of Sale Disclosure for Mutual Funds and Segregated Funds

I am writing on behalf of Transamerica Life Canada. We appreciate the opportunity to provide comments on the Proposed Framework 81-406.

By way of background, Transamerica Life Canada (Transamerica) has been serving the life insurance needs of Canadians since 1927. Through a national network of independent advisors, Transamerica is one of Canada's leading life insurance companies, with more than \$10.3 billion in total assets under management, total gross premium of \$700 million, and a top 5 market share position in our core product lines of term insurance, universal life insurance and segregated funds. Transamerica is also a member of the AEGON Group, one of the world's largest life insurance and pension companies, and strong provider of investment products.

Transamerica supports the vision of the Joint Forum and its Proposed Framework to provide "*investors with meaningful information when they need it most – before they make their decision to buy a fund.*" We also applaud the Joint Forum for taking the requisite time to seek comments from both the industry and investors.

The following represents our comments, concerns and recommendations to the Joint Forum on the Proposed Framework.

Key Facts – comments and concerns

Transamerica supports the concept of the Key Facts and its use of a question-and-answer format to explain the key features of an Individual Variable Insurance Contract (IVIC) to potential policyholders. The content is investor-friendly; and for advisors and insurers the proposed approach is desirable as it creates consistency across the industry for the presentation of information and for comparing at a high-level the main contractual features of IVICs offered by various insurance companies.

We do, however, have a fundamental concern of incorporating the Key Facts by reference into the IVIC.

IVICs are not sold directly to the public. Rather an individual must work with a provincially regulated, life-licensed advisor that is contracted to sell an insurance company's products. An insurance company is obligated to screen agents for suitability before contracting with them and to report agents to provincial authorities if they engage in unsuitable actions.

When an advisor chooses to offer an IVIC to an investor, the investor will enter into a contract with an insurance company. Unlike a mutual fund, the policyholder does not legally own any units, securities or investments; rather the policyholder will have notional units and specific rights within the contract offered by the insurance company.

The legal obligation of the insurance company is to ensure that the policyholder receives prior to or at the point-of-sale the most current version of both the IVIC annuity contract and the Information Folder.

Under the Proposed Framework, the Key Facts is intended to be a brief, plain-language summary of several of the rights and features of the contract; however it should not replace or supplement or interpret the contract. Currently, the Information Folder which accompanies the IVIC is not part of the contract and this is explicitly stated in the Information Folder. Rather the Information Folder is intended to provide clear and plain-language disclosure of the various features and rights of the IVIC, but it always refers the policyholder to the contract for full information. While there may be concerns about misrepresentation if the Key Facts is not part of the IVIC, the policyholder is protected by both common and statutory law if an insurer fails to disclose or misrepresent a material fact.

Key Facts – recommendation

1. Transamerica supports the concept of the Key Facts; however we recommend that the Key Facts replace the Executive Summary section of the Information Folder. The Executive Summary is intended to provide a general summary of the features offered by the contract. The adoption of the Key Facts in place of the Executive Summary would be a significant improvement to the Information Folder and would benefit both investors and advisors.
2. Transamerica also recommends that there should be consideration given to expanding the Key Facts to include the sales charges and advisor compensation information proposed to be presented on page 2 of the Fund Facts (discussed below).

Sales charges and advisor compensation are more accurately explained at a contract level. For example, if the policyholder invested in a segregated fund on a deferred sales charge (DSC) basis and decided to switch to another fund, the existing DSC schedule of the surrendered units would continue to the acquired units of the other fund. If the policyholder switched a portion of their DSC units to Initial Sales Charge (ISC) units of the same segregated fund, the advisor's trailer compensation would correspondingly change.

As such, the presentation of information around these contractual features is more appropriate at a contract level than at an individual segregated fund level. Consideration should be given to including this information into the Key Facts, rather than the Fund Facts.

3. The Key Facts should not form part of the IVIC contract. A brief, plain-language Key Facts summary that is purposely written to "*avoid legal or financial jargon*" should not replace or supplement or interpret the contract. An insurance company should not be forced to increase its potential liability as it is an incomplete document that could be used to interpret the contract. A number of remedies for misrepresentation are available to the consumer without needing to incorporate the new Key Facts into the contract.

Fund Facts – comments and concerns

Transamerica generally supports the content of the Fund Facts and its use of a question-and-answer format to provide to potential policyholders, key information about a segregated fund available within an IVIC. Like the Key Facts, the proposed content is easy to read and user-friendly. For advisors and insurers the proposed approach is desirable as it creates consistency across the industry for the presentation of fund information.

We do, however, have several fundamental and practical concerns with the proposed Fund Facts. Specifically, our concerns are focused on: (1) only providing Fund Facts for the investments initially chosen by the investor; (2) having individual Fund Facts for each guarantee class of a segregated fund offered within the IVIC; and, (3) incorporating the Fund Facts by reference into the IVIC.

As noted in the Proposed Framework, insurers are responsible for meeting delivery obligations and for making sure that the advisors who are contracted with them deliver the Fund Facts. In fact, it is an unfair or deceptive practice for insurers to fail to deliver the Fund Facts when they are required to do so.

When a consumer purchases an IVIC, they have determined with their advisor that the various contractual features (i.e. maturity benefits, death benefits, resets, etc.) of the IVIC meet their specific needs and objectives. An important point to note is that the segregated funds available to a policyholder are also part of the IVIC's contractual features. Under contract law there could potentially be the argument that there was no *consensus ad idem*, or meeting-of-the-minds, at the time the contract is concluded if the policyholder is not presented with all of the investment options. Insurers are potentially subject to additional liability if the advisor does not disclose all of the segregated funds, or other investment options, that are available within the IVIC either at the time of purchase or at any time in the future. Not presenting all of the investment options available within the IVIC runs contrary to an insurers' legal obligation to not be misleading.

To meet this disclosure obligation, an IVIC's segregated fund options are presented in a separate document referred to as a Summary Facts Statement (sometimes referred to by other insurers as "Fund Highlights" or "Fund Fact Sheets and Financial Highlights"). The information within the Summary Fact Statement is similar in content to the proposed Fund Facts. When we add additional segregated funds to an IVIC, it is our practice to mail out to all existing policyholders of the IVIC the Summary Fact Statement for each of

the new segregated funds, to inform them that these additional investment options are now available and to refer them to their advisor if they want more information. Subsequently, the Summary fact Statement is amended to include such new investment options.

Currently, to ensure compliance at the point-of-sale, we have one Enrollment Kit for an IVIC that is open for sale. The Enrollment Kit includes the IVIC application, Annuity Contract, Information Folder, Summary Fact Statement, and any requisite Endorsements required for registered plans. We physically package these documents and information together into a single Enrollment Kit to ensure that the advisor provides all of the requisite information at the initial point-of-sale.

As compliance with the requirements for the delivery of disclosure documents rests with the insurer, we would have significant practical concerns with relying on the independent advisor or distributor to package together the requisite Fund Facts or Key Facts at or prior to the point-of-sale. While we could ship to advisors and distributors the individual materials, the proposed framework will make it extremely difficult for insurance companies who distribute IVICs through independent advisors and distributors to ensure that our regulatory responsibility to IVIC policyholders is fulfilled.

Related to the above is the proposal to produce a Fund Fact for each guarantee class of a segregated fund that has a separate MER within an IVIC. Transamerica, like other insurance companies offering IVICs, has some important and practical concerns with the implementation of this proposed regulatory requirement.

In order for Transamerica to ensure that it meets its regulatory delivery obligations as outlined in the proposed framework, we would need to modify our current process (described above) and create separate enrollment kits for each guarantee class of a segregated fund available within our IVICs that are currently open for sale. For example, based on our current products, this would result in 83 separate Enrollment kits for one IVIC and 52 separate Enrollment kits for another IVIC offered by Transamerica. Each Enrollment kit would include the requisite Key Facts and Fund Facts. Through this approach, if a policyholder initially invested in five segregated funds, it would result in the policyholder receiving five Fund Facts and five Key Facts documents at the initial point-of-sale. The consumer will likely have concerns in receiving the same Key Facts several times. While it has not been specifically quantified, this type of customization of Enrollment Kits would significantly increase our distribution costs, which are ultimately passed on to consumers.

In addition, with the increased material and customization required to support the Proposed Framework, we would be concerned with advisors potentially limiting choice. Initial transactions for an IVIC are almost always done on a face-to-face basis, typically at the potential policyholder's home. In some instances, an advisor may need to travel over long distances to meet with current or potential clients. An independent advisor also typically deals with more than one insurer. Under the Proposed Framework, an advisor would need to carry a significant number of individual Fund Facts and Key Facts, from several different insurers. This may simply not be practical and an advisor may just limit their recommendations to a few investment options to limit the volume of material that they may need at the point-of-sale. This ultimately decreases choice for the consumer and increases advisor and insurer liability for not making the consumer aware of all the investment options available within the IVIC.

Fund Facts – recommendation

4. Transamerica supports the concept of the Fund Facts; however we strongly recommend that the single Fund Facts be bound together into a Fund Facts booklet to be provided to policyholders at the initial point-of-sale.

Like the guarantees, the investment options are a contractual feature of an IVIC. It is an unfair or deceptive practice for insurers to fail to deliver the Fund Facts when they are required to do so. Not presenting all of the investment options available within the IVIC runs contrary to an insurers' legal obligation to not be misleading.

The establishment of prescribed rules for the presentation of key fund information in a question and answer format creates consistency across the industry and would arguably be desirable to consumers, advisors and insurers. However, as stated above, all of the investment options available within an IVIC should be made available to the policyholder at the point-of-sale. The advisor can choose to highlight the segregated funds that they recommend for the policyholder, but the policyholder must be made aware of all of the investment options that are available within the IVIC at the initial point-of-sale. It also gives the prospective policyholder a "whole picture" overview of the investment options and we believe puts him or her in a better position to make an informed decision with their advisor.

5. Transamerica also recommends each guarantee class of a segregated fund offered within the IVIC appear on the Fund Facts for the segregated fund. This could be accomplished by presenting performance and MER information for all guarantee classes on page 2 of the Fund Facts and moving the sales charge option and advisor compensation information to the Key Facts (as proposed in Recommendation #2 above).
6. Similar to Recommendation # 3 above, the Fund Facts should not form part of the IVIC contract. A brief, plain-language Fund Facts summary that is purposely written to “*avoid legal or financial jargon*” should not replace or supplement or interpret the contract. An insurance company should not be forced to increase its potential liability as it is an incomplete document that could be used to interpret the contract. A number of remedies for misrepresentation are available to the consumer without needing to incorporate the new Fund Facts into the contract.

Subsequent Purchases and Switches – comments and concerns

Transamerica has practical concerns with the Proposed Framework’s regulatory requirement that insurers have to deliver the Fund Facts to policyholders for subsequent purchases and switches.

As explained above, under the current system the policyholder receives information on all of the investment options available within an IVIC at the initial point-of-sale. In addition, we mail to existing policyholders the Summary Fact Statement for any new investment options that are added to the IVIC. In keeping with the objective of the Proposed Framework, our recommendations above are intended to improve the existing system and provide consumers with meaningful information at the time of contracting, or point-of-sale. The proposed requirement to deliver Fund Facts to policyholders for subsequent purchases and switches will not necessarily improve the current system.

It is important to note, that once the IVIC has been established between the policyholder and the insurer, a relationship has also been established between the advisor and the policyholder. Typically advisors will have their clients sign a Limited Power of Authority (LPOA) that allows the advisor to instruct the insurer on subsequent transactions as requested by the policyholder. The purpose of the LPOA from the policyholder’s perspective is to expedite certain transactions and eliminate unnecessary paperwork.

Policyholders are already accustomed to subsequent purchases or switches being immediately transacted. These rights are within the IVIC. The proposed process will make the current process less efficient and raises the potential for problems with policyholders wishing to conduct a time-sensitive transaction, such as an RRSP contribution on the last day of the RRSP season, or making a switch to another segregated fund during volatile markets.

Not allowing a subsequent purchase or switch to proceed until the appropriate Fund Facts has been sent to the policyholder, will impede an efficient process that currently has such transactions occur primarily over the phone or at the policyholder's home. It may also lead to frustrated or dissatisfied consumers who may become open to investing in alternative investments with fewer presale requirements, or products such as Principal Protected Notes that are less regulated and have insufficient or inconsistent presentation of disclosure information. This would be a disservice to consumers and would, we submit, not be in their best interests.

Subsequent Purchases and Switches – recommendation

7. Transamerica recommends that the current process for subsequent purchases and switches should not be changed.

If upon further review, the Joint Forum still believes that there is some benefit to the Fund Facts being re-sent to the policyholder, the framework should consider providing the consumer with options, such as allowing for the investor to either waive receipt of the Fund Facts in advance of the subsequent transaction and rely on information on the company's website or have the requisite Fund Facts sent to the policyholder with the trade confirmation. However, both options will increase the costs to the insurer to track and the latter option will be difficult to implement. Ultimately these increased costs will impact the consumer.

Cooling-off Right – comments and concerns

The Proposed Framework introduces a two-day cooling-off right (a rescission right) that allows an investor to cancel their purchase and get back the lesser of the amount of their original investment into the IVIC or the value of the fund on the day that the right is exercised. This right is to apply to the initial investment into the IVIC, subsequent purchases (with the exception of pre-authorized payment plan purchases) and switches (except for switches under asset allocation services).

While Transamerica supports the introduction of this right for both the initial investment into the IVIC and for subsequent purchases, we do have concerns on how this right would be introduced for subsequent purchases and how it would work for switches.

With regards to subsequent purchases involving new money, the cooling-off period would introduce a new right that is not reflected in our current contracts. Further consideration would be required as to how this new right would be implemented as we, and likely other insurers, would need to assess how this right could be offered to both existing and new policyholders. If this right were “grandfathered” to existing contracts, the responsibility to make this right available to existing policyholders will be especially onerous. It would involve mailing to our existing policyholders a rider or endorsement granting them the cooling-off right with the relevant stipulations regarding gains and losses.

While the Proposed Framework states that this right is “*not intended to protect investors from a short-term decline in market value*”, there is the potential for such abuse and this right may provide an opportunity to play the markets at no risk. The Canadian Life and Health Insurance Association (CLHIA) has also cited in its response to the Joint Forum, potential tax concerns with respect to this rescission right and subsequent purchases into an IVIC. We have had an opportunity to participate in the development of the CLHIA’s response to you and endorse their comments and concerns.

The Proposed Framework also states that the “*investor will also get back any sales charges or other fees paid to buy the fund. The investor will not pay any redemption fees.*” This introduces an opportunity for abuse through the avoidance of DSC fees. A policyholder could choose to initially invest in a segregated fund on a DSC basis, later switch to another fund and then exercise their cooling-off right and receive their money without the appropriate fees being applied. The Proposed Framework introduces the ability for this potential abuse to occur and this should be addressed.

Finally, there is the potential that this new right could be used for furthering money laundering activities. While all financial institutions have Anti-Money Laundering policies and controls in place, this new right will increase our risks and monitoring obligations.

Cooling-off Right – recommendation

8. Transamerica supports the introduction of this cooling-off right for both the initial investment and subsequent purchases into the IVIC; however we do have concerns on how this right would be introduced for subsequent purchases and how it would work for switches. We would recommend that it not apply as it is currently proposed.

Segregated Fund Facts and MERs – comments and recommendation

Under the Proposed Framework, the Fund Facts for a segregated fund would require a breakdown of the segregated fund's MER to show both the Fund Expenses and Insurance Costs separately. For Transamerica, and likely other insurance companies, this would potentially reveal proprietary pricing information with respect to institutional partners and actuarial pricing practices. As well, we fail to see the benefit that such a breakdown would truly provide to the end consumer.

If upon further review, the Joint Forum still believes that there is some benefit to splitting out the MER, the proposed framework should consider having the fund's Management Fee presented with the MER. A brief explanation to the consumer should be provided explaining what is included in the Management Fee (i.e. insurance costs, compensation to the advisor, profit, etc.), the rights of the insurer to change the Management Fee and the rights of the consumer if the Management Fee is to be changed. This approach could be taken with both segregated funds and mutual funds.

However, if the intent of the Fund Facts is to provide information in a simple and comparable format, then from a consumers' perspective all that they would need to know is the total MER of the segregated fund, with management fees, fund expenses and insurance costs included. This number shows the consumer the total cost of the investment and would be the most appropriate figure for comparing the costs of a segregated fund with other investments within the IVIC, across segregated funds available within other IVICs, or with mutual funds.

9. The Fund Facts for a Segregated Fund should simply show the MER.

In Conclusion

On behalf of Transamerica, I would like to thank the Joint Forum for providing the opportunity to provide comments on the Proposed Framework. We trust that our comments, concerns and recommendations will be given thoughtful consideration by the Joint Forum.

We would be pleased to discuss any of our responses with you in more detail at your convenience.

Yours truly,

A handwritten signature in black ink, appearing to read "Paul Reaburn", with a long horizontal flourish extending to the right.

Paul Reaburn
Chairman, President, and Chief Executive Officer
Transamerica Life Canada