The Variable Annuity Life Insurance Company
2929 Allen Parkway, L4-01
Houston, Texas 77019

April 12, 2004

Jonathen G. Katz
Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-0609

Re: ***Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, File No. S7-06-04***

Dear Mr. Katz:

The Variable Annuity Life Insurance Company ("VALIC") appreciates the opportunity to comment on the above-referenced rule proposal (the "Proposal") which would require broker-dealers to make additional disclosures in connection with the sale of open-end mutual funds, variable annuities, variable life insurance policies and 529 plans.

VALIC is a stock life insurance company engaged primarily in the sale of fixed and variable annuity contracts on a group and individual basis. A substantial part of our business involves contracts designed to provide retirement benefits under a variety of tax-sheltered retirement programs. Most contracts are group contracts or individual contracts administered as a group. We endorse the comments made by the SIA and NAVA and we provide below additional comments for your consideration with respect to the treatment of variable annuities, which emphasis on variable annuities that are utilized as funding vehicles in tax-qualified retirement plans ("group variable annuities").

Our comments to the Proposal should not be construed as opposing improved and enhanced disclosure, but only to suggest that the new disclosure rules be tailored appropriately for variable annuities, or, in the alternative, provide enough flexibility for firms to tailor their disclosure to the wide variety of investment security products, including group variable annuities.

1. **Group Variable Annuities Are Different Than Mutual Funds and Do Not Raise the Same Concerns as Mutual Funds**

As a general matter, we do not believe that the variations and complexities present in variable annuity products have been adequately addressed in the Proposal. The staff correctly acknowledges the variance in the types of variable product transactions; however, the Proposal appears to apply equally to variable annuities as to mutual funds and 529 plans even though their respective benefits, costs and conflicts can differ greatly from each other. For example, variable annuities do not normally distinguish between net asset value ("NAV") and the public offering price, do not have breakpoints, and are not set up to pay differential compensation to registered persons. Perhaps the most significant difference is that when a person invests in a variable annuity he or she is not investing directly in the underlying funds; it is the insurance company separate account that owns the underlying mutual funds.

Purchase payments under group variable annuities are made by the employer (or other plan administrator) typically by means of a salary reduction arrangement. Under such an arrangement, a participant authorizes his or her employer to withhold a specified amount from each salary payment and apply that amount to the contract. For example, VALIC's flagship fixed and variable annuity product, Portfolio Director, offers 65 variable investment options. Once an employer chooses Portfolio Director, the next decision is whether to allow participants to invest in any of the 65 options, or to limit the number of variable investment options for the retirement plan. The employer is responsible for these decisions (not VALIC or plan participants) and may be subject to a host of regulations addressing fiduciary obligations. It is important to note that the interaction between a registered representative and a group participant begins with the representative assisting the participant in enrolling in the annuity. This scenario simply does not raise the conflict issues discussed in the proposal in connection with the sale and distribution of mutual funds and 529 plans.

Because of these differences, certain of the proposed definitions in Schedule 15C cannot be easily applied to variable annuities. For example, the SEC should consider amending its definition of revenue sharing to exclude any payments made for transfer agency services and any other services provided to customers that a fund would otherwise be required to provide, such as delivery of regulatory documents. We believe these costs should be specifically excluded from the definition of revenue sharing because they are incurred regardless of the party providing the services.

In addition, variable annuity providers often receive 12b-1 fees, but do not receive sales commissions primarily because, as noted above, the insurance company separate account purchases the mutual fund on behalf of the plan participants (consumers). Thus, consumers do not pay a sales charge when they invest in the mutual fund through the insurance company separate account. The 12b-1 fee normally compensates the variable annuity provider for bringing in consumers; however, in the case of VALIC, the amount of the separate account charge is directly reduced by the amount of the 12b-1 fee. Thus, the 12b-1 fees received directly benefit

customers. This cannot be shown on the currently proposed disclosure documents because it is a fund-level fee. We also receive recordkeeping fees, sometimes from the fund company and sometimes from the corporate parent or the investment adviser. Under the SEC's current definition of revenue sharing, we would be required to disclose this, because the SEC believes that this creates a conflict of interest. However, since we are opening omnibus accounts at the fund level and then handling all the recordkeeping for the participants, we are, in fact, saving the fund money.

2. **Disclosure Alternatives for Group Variable Annuities**

Several of the disclosure items in the proposed rule are already disclosed in the fund prospectuses and financial reports. Rather than layering additional disclosure on top of the currently required disclosure, we suggest that existing disclosure be re-tooled to more clear and meaningful to investors. For example, the sales loads proposed to be included in the confirmation document are currently disclosed in the fee tables, required for all mutual funds and variable annuities. Other disclosure, such as the discussion of commissions and compensation in the underwriting section of the Statement of Additional Information, could be made more consumer-friendly and moved to the prospectus, which is the primary disclosure document at the point of sale for the variable annuity industry. Many funds include sales charges, fees and other important information in stand-alone sales literature.

We request that the staff consider a one-page, stand-alone summary to be delivered prior to the sale of variable annuities, in addition to the contract prospectus. The summary could include the name of the product, a description of the product, and all relevant fee information and examples of the costs. These items are shown in prospectuses now as "Fee Tables and Examples." The summary could include a cost-benefit analysis of fixed and variable annuities, including a discussion of the death benefit and the income options, such as guaranteed income for life. Compensation to the offering broker-dealer should be disclosed if paid by the issuing insurance company directly to the broker-dealer firm. The summary rules should allow a dollar amount or a percentage to be shown with explanations so that the consumer is informed about who makes what from a sale.

The mutual fund industry stand-alone summary could include a greater explanation of the costs for each mutual fund. This would show what goes in to the overhead for a mutual fund company: investment advisory fees for the company that manages the money; distribution fees, pursuant to rule 12b-1, that are used for marketing the fund and paying for brokers to bring customers to the fund; "other expenses," the catch-all basket for the registration fees a fund pays to each state and to the SEC for selling shares, the legal fees for the regulatory documents, printing and mailing fees for the required financial report mailings, transfer agency fees for all the recordkeeping, fees to the web developers to keep the fund's website easily accessible, fees to the fund's board of directors for keeping an eye on the fund managers and to keep the shareholders' interests at the forefront, etc. The commission information would also be shown, so the consumer could follow the front- or back-end sales charges going directly to the broker.

The consumer needs to know whether the commission reduces the amount invested in the product.

A broker-dealer offering a product should be required to include a section on the compensation to the broker-dealer. This could include disclosure of 12b-1 fees collected from funds, as well as any commissions received on the sale of products, plus trailing commissions, and also any finder's fees that the broker receives. The receipt of fees for "shelf space" or "set-up fees" (i.e., fee for adding other product to the broker's line-up) could also be disclosed in this summary.

Finally, rather than try to create a one-size fits all confirmation that will most likely confuse consumers and only raise the cost of doing business for the mutual funds, variable annuity, and brokerage industries, the SEC should have the confirmation and disclosure fit the product. Variable annuities are not mutual funds and are not municipal securities and the costs are disclosed and explained in the disclosure documents. Having a stand-alone summary delivered prior to the initial sale, followed by a clear confirmation that is applicable to the investment security would better serve investors and help to clear up the confusion, rather than add to it.

3. More Time is Needed to Examine Prior Exemptive Relief Granted Under Rule 10b-10 with Respect to the Periodic Disclosure Alternative

Based on the foregoing, we strongly urge the staff to consider granting more time to carefully consider the unique disclosure issues associated with variable annuities, including group variable annuities. This would include consulting with us and other similarly-situated industry participants as well as industry groups such as the National Association for Variable Annuities and the National Association of Insurance Commissioners. It would also provide an opportunity to develop a disclosure form (with accompanying definitions) that would be useful to investors who purchase variable annuities – group or individual.

VALIC previously has received no-action relief under rule 10b-10(f) to provide quarterly (and in certain instances, annual) confirmation statements to confirm initial purchase transactions and subsequent payroll reduction payments for participants under the variable benefit contracts.[1] VALIC is required to mail to approximately 2 million plan participants, within 5 business days after the end of each quarter, a quarterly statement of account activity reporting all transactions during the quarter and containing information prescribed by rule 10b-10(b)(2). The staff notes in

[1] *See* SEC No-Action Letters from: Fred A. Little, Shaw, Pittman, Potts & Trowbridge to Jeffrey L. Steele, Office of the Chief Counsel, Division of Market Regulation (Nov. 24, 1979); Fred A. Little, Shaw, Pittman, Potts & Trowbridge to Jeffrey L. Steele, Office of the Chief Counsel, Division of Market Regulation (Jan. 28, 1982); Diane E. Ambler, Freedman, Levy, Kroll & Simonds to Mary E. Chamberlin, Chief Counsel, Office of the Chief Counsel, Division of Market Regulation (Dec. 20, 1985); Thomas C. Lauerman, Freedman, Levy, Kroll & Simonds to Robert L.D. Colby, Chief Counsel, Office of the Chief Counsel, Division of Market Regulation (Aug. 23, 1991); and Katherine L. Stoner, American General Financial Group to Catherine McGuire, Chief Counsel, Office of the Chief Counsel, Division of Market Regulation (Oct. 25, 2001).

the Proposal that persons, such as VALIC, who have received such exemptions under rule 10b-10(f) would not be automatically exempt from the provisions of proposed rule 15c2-2(g).[2] If the summary disclosure permitted under the periodic disclosure alternative ultimately requires additional levels of individualized disclosure (such as disclosure of information related to deferred sales loads, asset-based sales charges, or other service fees), adherence to the 5 business day requirement may become impracticable.

Given the potential cost and disruption to a quarterly confirmation system that has been previously approved by the SEC on numerous occasions and which has not been the subject of customer complaints, we request that the staff provide a mechanism in the final rules whereby persons granted such past relief under rule 10b-10(f) be able to transition to new rule 15c2-2 without significant amendments to their quarterly and/or annual confirmation statements. Any additional disclosure requirements can be made in a point-of-sale, stand-along disclosure document as discussed above.

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We would be happy to assist the staff in designing an annuity-specific stand-alone disclosure document and a confirmation of sale for annuities. We are also available to meet and discuss these disclosure issues, particularly the impact on variable annuities, at your request.

Very truly yours,

David den Boer
Senior Vice President
Chief Compliance Officer

[2] *See* Proposal, fn. 124