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May 9, 2005

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

Re: ***New Rule 22c-2 — Redemption Fees for Redeemable Fund Securities (File No. S7-11-04)***

Dear Mr. Katz:

On behalf of American General Life Insurance Company, The United States Life Insurance Company in the City of New York, AIG Life Insurance Company, and American International Life Assurance Company of New York (collectively, "the Life Insurance Companies"), and The Variable Annuity Life Insurance Company ("VALIC"), we appreciate the opportunity to comment on the above-referenced matter. The Life Insurance Companies and VALIC are affiliated companies.

On March 11, 2005, the Securities and Exchange Commission ("Commission") adopted new Rule 22c-2 under the Investment Company Act of 1940 ("new rule"), which requires mutual fund Boards of Directors to affirmatively determine whether they should impose, for each of their respective funds (and mutual fund complexes), a redemption fee of up to two percent for shares redeemed within seven calendar days of purchase.[1] The new rule also requires intermediaries to agree to provide shareholder identity and transaction information upon a fund's request and to implement fund trading restrictions on the individuals the fund identifies as violators of the fund's market timing restrictions. Concurrent with the adoption of the new rule, the Commission asked for additional comments on whether it should establish uniform standards for redemption fees charged under the new rule.

For the reasons set forth below, we generally support this uniform concept and respectfully request the Commission apply uniform standards across all mutual funds. We also discuss below certain tensions between the new rule and other applicable legal and regulatory regimes.

I. BACKGROUND

The Life Insurance Companies are all stock life insurance companies that sell both variable universal life ("VUL") policies and variable annuity ("VA") contracts (collectively referred to as the "Contracts" unless indicated otherwise). Currently, the Life Insurance Companies have 57 Contracts containing 259 mutual funds from 40 mutual fund complexes. A significant majority (*i.e.*, 37 out of 40) of these mutual fund complexes are unaffiliated with the Life Insurance Companies. The Life Insurance Companies would, under the new rule, use their in-house administration and recordkeeping services to serve as recordkeepers to administer the various excessive trading and market timing policies.

VALIC is a stock life insurance company providing retirement benefits through a variety of tax-sheltered retirement programs. As of March 31, 2005, VALIC and its subsidiaries offered nearly 3,000 mutual funds from 65 different mutual fund complexes to approximately 2 million participants through fixed annuities, VAs and group mutual fund retirement plans. VALIC provides recordkeeping services to group mutual fund retirement plans ("group plans") through its recordkeeping affiliate, VALIC Retirement Services Company ("VRSCO"). VALIC uses its in-house administration services and systems to maintain annuity accounts at the group and individual level, while VRSCO leases a recordkeeping system to maintain records for group mutual fund retirement plan participant accounts.

In short, the Life Insurance Companies and VALIC are multi-complex recordkeepers, who must collectively deal with the redemption fee policies of thousands of individual funds for millions of investors. In addition to the redemption fee policies, each Contract prospectus contains an overriding market timing policy, as required by the recently revised Forms N-4 (Item 7(e)) and N-6 (Item 6(f)) under the Securities Act of 1933 and the Investment Company Act of 1940.

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[1] Investment Company Act Release No. 26782 (March 11, 2005), 70 FR 13328 (March 18, 2005) ("Adopting Release").

II. UNIFORM REDEMPTION FEE PARAMETERS WOULD BENEFIT INVESTORS

Following the implementation of the new rule, we anticipate numerous variations in redemption fee policies, even within the same mutual fund complex. When multiplied by the hundreds for the Life Insurance Companies and by the thousands for VALIC of redemption fee policies that must be administered by multi-complex recordkeepers, programming and administering such redemption policies becomes complicated and costly. Even more difficult is the task of communicating to Contract owners, group plan sponsors and group plan participants (collectively "investors" unless indicated otherwise) in "plain English" all of the different mutual fund policies on redemption fees, such as holding periods and the accounting methods applied, on a per-fund basis. As discussed below, uniform redemption fee policies would be easier to communicate and less costly to administer.

A. Clear Investor Communication

Simpler, standardized policies would be more easily understood by investors and would enable them to compare the various redemption fee policies of mutual funds from fund to fund. We believe that investors expect the redemption fee policies to be similar across mutual funds, especially across those funds within the same mutual fund complex. Standardization would allow investors to select mutual funds suitable to their needs, without the need to consider complicated redemption fee policies that vary from mutual fund to mutual fund. In addition to facilitating better choices by investors, uniform redemption fee policies also would minimize the increase of administration costs to intermediaries, and in turn, allow the intermediaries to minimize the expenses that may ultimately be borne by investors.

B. Administration Processes and Related Costs

The process of distilling the variations in redemption fee policies into a clear, concise communication to investors is a large administrative burden that may increase costs for investors. First, a typical recordkeeper gathers the redemption fee information from each fund complex, including, for example, the amount of the fee, the holding period, accounting method applied (FIFO or LIFO), the sub-accounts or retirement accounts to which a fee applies, the purchases subject to redemption fee tracking, the redemptions subject to redemption fees, and any other fund exceptions or exclusions. Next, a matrix is typically created to manage this information, samples of which are included herein as Exhibit A (on behalf of VALIC) and Exhibit B (on behalf of the Life Insurance Companies). Some of the information, such as the basic redemption fee and holding period, may be easily programmed for some recordkeeping systems, but all of the other items require much more time and effort for accurate and precise programming.

The recordkeeper is then required to plainly and clearly communicate these redemption fee policies, and their variations, to each plan sponsor, individual plan participant or Contract owner. To accomplish this, a recordkeeper must first outline a mutual fund's frequent or excessive trading policies, coupled with an explanation of the mutual fund's redemption fee policies. This means that a recordkeeper must translate the contents of the matrix (*e.g.*, Exhibits A or B) into one or two summary paragraphs that can be easily understood by each investor. Our collective experience has shown that many investors are overwhelmed by reading multiple fund prospectuses, supplements, recordkeeper notices, and plan sponsor newsletters to determine what redemption fees mean in their daily lives; they seek to understand their investments with a minimal commitment of their time. This may be a practical impossibility without standardization and uniform redemption fee policies.

A recordkeeper also is required to send updates to changes in the policies (or totally revise a policy summary) when a retirement plan sponsor changes funds for any reason, or to all other investors when a mutual fund changes its policies. VALIC, for example, has designed many plan sponsor, participant and other investor communications explaining mutual fund policies, such as redemption fees, and has included the relevant background of the fees as set forth in the new rule. Because mutual funds may change their policies without notice to recordkeepers, the Life Insurance Companies and VALIC must frequently revise redemption fee notices to investors. This is compounded for VALIC in the group plan context because plan sponsors also may change mutual fund investment options within the plan at their discretion.

Technology expenses will be significantly higher without standardization; uniform redemption fee parameters would help to reduce this increase. The Life Insurance Companies and VALIC utilize several administrative systems that would require the building of unique infrastructures to accept the transmissions and translate the data for each system's transactions. This would necessitate the ability to review each variable product and its allocation rules to properly process the redemption fees for each transaction. Whichever method the Commission elects, the development costs to administer redemption fees are estimated to be in excess of $1,000,000 for the first system and significantly more for the remaining systems as outside vendors would need to be retained to meet a one or even a two year implementation period.

Many administrative systems are only able to track aggregate redemptions and purchases by the separate accounts, and separately and subsequently calculate and track individual contract owner interests. If the Life Insurance Companies and VALIC were to collect the redemption fees and then remit the proceeds to the funds (the third option the Commission suggested in its Adopting Release), it would be less burdensome to program an administrative system to track holding periods of the separate account interests of each investor because such a system would not require the separate collection, integration and transmittal of individual contract owner trading activity information to the fund for each business day. We therefore support the third option specified in the Commission's Adopting Release (discussed below in Section IV.C).

C. Effects of Non-Uniform Redemption Fee Policies

The higher costs of administering non-uniform and complex redemption fee policies may drive intermediaries such as the Life Insurance Companies, VALIC and VRSCO to reduce the number of mutual funds they make available to investors in order to minimize increases in the intermediaries' administration expenses. This would ultimately reduce the number of mutual fund alternatives available to the majority of mutual fund investors who choose to purchase shares through intermediaries. If intermediaries become reluctant to deal with mutual funds that impose fees, mutual fund Boards of Directors may be more reluctant to impose such fees in the first instance, thereby undercutting the purpose of the new rule. We are already experiencing these effects. For example, the Life Insurance Companies have, in the past year, dropped several mutual funds that introduced redemption fees, *i.e.*, "R Shares." VRSCO has determined not to offer certain mutual funds to group plans due to redemption fee policies it is unable to administer.

Non-uniform redemption fees are more than a "one-time" problem for intermediaries. The mutual fund sub-account options available in variable insurance products and group mutual fund retirement plans change frequently as providers, group plan sponsors, and insurance companies add new options for investors and existing mutual funds liquidate or merge. If redemption fees are not uniform, intermediaries will face the recurring expense of programming systems to account for the imposing of, and changes to, redemption fees.

Based on the foregoing, we believe that a uniform redemption fee policy, with the same applicability, exclusions and exceptions for all mutual funds, would provide much-needed consistency for investors, retirement plan sponsors, plan participants, and for recordkeepers, and would ultimately lower the administrative costs associated with the implementation and maintenance of redemption fees.

III. THE TYPES OF TRANSACTIONS TO WHICH REDEMPTION FEES APPLY SHOULD BE MADE UNIFORM

We request that the Commission limit the imposition of redemption fees to certain transactions initiated by investors. If the purpose of the new rule is to reduce or eliminate market timing transactions and disruptive trading, then the redemption fee policies should apply only to investor-initiated activities that actually pose such risks. In the group plan context, for example, many employer-directed or plan sponsor transactions do not pose the risk of market timing or other abusive short-term trading practices. Similarly, with respect to Contracts, many transactions are driven by the insurance features of the Contract and could not be used for market timing purposes. In addition, we suggest that the following transactions should be exempted from redemption fees.

- **Corrective distributions:** These distributions are usually made to correct an overcontribution to a retirement plan by an employer or plan participant.
- **Death distributions:** These distributions occur upon death of a plan participant or Contract owner.
- **Qualified Domestic Relations Orders (QDROs) withdrawals:** These normally occur as a result of a separation or divorce and may be court-ordered.
- **Redemptions due to separation from employment:** Recent federal regulations requiring automatic rollovers for certain accounts could cause redemptions at the direction of the plan sponsor or employer.

- **Shares redeemed to cover plan administration fees:** These are employer-directed redemptions that occur to cover the administrative costs of the retirement plan.
- **Shares redeemed to cover periodic deductions of Contract-based charges and fees including:**
  - Charges that occur upon each premium payment made – premium tax charge and premium expense charge
  - Charges that occur monthly – flat monthly administrative charge, cost of insurance charge, monthly charge per specified amount and rider charges
  - Charges that occur daily – mortality and expense fee
  - Charges that occur by transaction – surrender charge, policy loan interest and transfer fee
- **Required minimum distributions:** Prearranged periodic distributions such as required minimum distributions should be exempt from redemption fees since a systematic withdrawal is an indication that there is no intent to market time.
- **Distributions due to disability.**
- **Financial hardship withdrawals.**
- **Full or Partial Withdrawals.**
- **Free Look Transactions.**
- **Prearranged redemptions.**
- **Automatic rebalancing.**
- **Asset reallocation programs.**
- **Automatic or systematic redemptions.** These transactions have been termed as "harmless" by the Commission.[2]
- **Redemption of shares that were purchased through dividend reinvestments or capital gain distributions**.
- **Annuitization payments.**
- **Transactions to correct errors made by the mutual funds.**
- **Transfers from a fund as a result of a fund merger, substitution or liquidation.**
- **Redemption of shares acquired by a dividend reinvestment or capital gains distributions.**

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[2] *See* Adopting Release, 70 FR at 13335.

- **Conversion of plan assets from one vendor to another.**
- **Plan level reallocations.**
- **Plan mergers.**
- **Forfeiture account activity.**
- **Termination of Plan.**
- **Exchange from one class of shares to another within the same fund.**
- **Exchange from one fund to another within the same fund complex at the employer's or plan sponsor's direction.**

The foregoing transactions do not pose a market timing risk because most of these transactions would be systematic, unplanned, unexpected, or legally required. Some of the transactions require extensive paperwork in compliance with federal laws, further demonstrating that the transactions do not pose a market timing risk. Other transactions may be investor-directed, but the circumstances of the investor's underlying trade would indicate that the investor is not redeeming shares for purposes of market timing.[3]

For retirement benefit plans, purchases that should be tracked for redemption fees because they are initiated or directed by an investor or plan participant:

- **Retirement contributions through payroll deduction.**

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[3] The following is an account by one of the Life Insurance Companies of an actual recent occurrence. This example shows how certain Contract-owner directed transactions may be made with the appearance of market timing, but in fact, it is not the intent of the investor to market time, and yet the investor ultimately bears the costs of such inaccuracies. The names have been changed to protect the investors' and the mutual fund complex's identity.

In Jan. and Feb. 2005, Mr./Mrs. Smith (owners of an American General Life ("AGL") VUL policy) moved $650,000 in and out of a mutual fund complex's Fund X , one of the policy's 50 investment options. AGL's administrator made a mistake and reprocessed the same transaction, so the funds were in and out more than what the Smiths had requested. This activity attracted the mutual fund complex's attention. The Smiths were technically in violation of AGL's published market timing rules, resulting in all of their transfers being requested only by U.S. mail. When the Smiths requested by mail another transfer into Fund X, the mutual fund complex rejected it. The transfer request had been made by U.S. mail and complied with AGL's procedures required following a market timing violation. The mutual fund complex agreed with AGL that this second request by the Smiths to transfer into Fund X was not a market timing offense. Nevertheless, the mutual fund complex rejected the trade, relying upon its prospectus language which allows the mutual fund complex to reject a trade in its sole discretion. The mutual fund complex insisted that AGL obtain an oral commitment from the Smiths reflecting that they intended to leave the transfer in Fund X for at least six months. The mutual fund complex stated that no amount of transfer would be permitted without the six-month promise (so that, in effect, Fund X is closed to the Smiths). As noted above, each VA and VUL Contract prospectus contains an overriding market timing policy as required by Forms N-4 and N-6 under. AGL is not permitted to favor one investment under the policy over the other investments. The mutual fund complex's position was not based on market timing or frequent trading problems, just its ability to reject the trade.

- **Purchase payments by check.**
- **Rollovers or transfers into a fund.**
- **Exchanges into a fund from another fund within the same fund complex, initiated by the investor.**

IV. UNIFORM REDEMPTION FEE ADMINISTRATION POLICIES

In addition to requiring uniformity of the types of transactions that would be subject to redemption fees, we also ask that the Commission require uniform policies for the administration of redemption fees. In particular, we believe that the SEC should require a uniform accounting method across mutual funds and standardize the means by which mutual funds will impose redemption fees.

A. Accounting Method

All mutual funds that choose to impose a redemption fee will have to select an accounting method to determine whether redeemed shares are "short term" and subject to redemption fees or "long term." The Commission noted in its Adopting Release that the majority of funds imposing redemption fees use the FIFO method. We recommend that the Commission require all mutual funds adopting a redemption fee to use the FIFO method. As discussed above, programming computer systems to account for shares by this single method will be markedly easier than accommodating all the alternatives that mutual funds might otherwise adopt. A uniform method will also be easier to explain to investors. Absent such uniformity, it is unlikely an investor would be able to determine with any certainty if a proposed transfer would or would not be subject to a redemption fee, even with the assistance of a plan sponsor or the Life Insurance Companies' customer service.

B. Standardization of Fees and Holding Periods

The redemption fee percentage and the holding period for purchases subject to redemption fee tracking and aging varies currently from fund to fund. We have seen ranges from 0.5 to 2% and holding periods from five business days to six months. As noted above, investors already have trouble keeping track of and comparing redemption fee percentages from one fund to another, and this adds another layer of complexity. As shown in Exhibits A and B for example, the percentages and holding periods vary widely. Making the fee and holding period the same for all mutual funds would benefit investors and intermediaries such as the Life Insurance Companies, VALIC and VRSCO. As noted above, with more standardization and uniformity, policies will be easier to communicate, program, and administer. The Life Insurance Companies and VALIC urge the Commission to adopt a uniform holding period for all mutual funds imposing a redemption fee.

C. Imposing Redemption Fees

In the Adopting Release, the Commission provided three methods for a mutual fund to assure that appropriate redemption fees are imposed.[4] First, fund intermediaries could transmit to the fund at the time of each transaction the account number used by the intermediary to identify the transaction. Second, intermediaries could enter into an agreement with the fund requiring the intermediary to identify redemptions subject to the redemption fee and provide sufficient information for the fund to assess the redemption fee. Third, the fund could enter into an agreement with the intermediary requiring the intermediary to impose the redemption fee and remit the proceeds to the fund.

We support the third option uniformly requiring mutual fund complexes that impose redemption fees to agree that the intermediaries will collect the funds' redemption fees and remit them to the fund. First, requiring intermediaries to accommodate all three possible methods for imposing redemption fees would be unnecessarily costly. We are also concerned that a fund complex might start with one method and then switch over to another, further complicating our programming. Second, allowing intermediaries to impose the fees would help to protect the privacy of investors by limiting the exchange of the investors' personal information between the intermediary and the mutual fund (see privacy discussion below). As noted in the Commission's Adopting Release, the NASD's Omnibus Account Task Force identified this method as the most viable approach,[5] and we agree that it should be uniformly utilized. For VUL policies in which the cash value of the policy must be calculated on a daily basis as a real value and retroactive valuing is impermissible, the only viable method to collect the redemption fee for these policies is the third method.

V. INFORMATION SHARING

The new rule requires mutual funds to enter into agreements with intermediaries requiring intermediaries to provide upon request the Taxpayer Identification Number of shareholders transacting with the fund. The purpose of this requirement is to permit the mutual funds to monitor the trading of individuals for the purpose of enforcing their redemption fee policies.

Not only are the exceptions to this rule not sufficiently comprehensive (for example, it should exclude mutual funds that do not impose redemption fees), but the Commission has not fully considered how the sharing rule interacts with provisions of Article V of the Gramm-Leach-Bliley Act of 1999 ("GLBA").

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[4] *See* Adopting Release, 70 FR at 13336.

[5] *See id.* at 13336.

A. Information Sharing Agreements with Mutual Funds That Do Not Impose Redemption Fees

The Rule provides certain exceptions for money market funds, exchange traded funds and any fund that affirmatively permits short-term trading of its securities and makes required disclosures. However, a fund that imposes no redemption fee but does not meet one of the three proscribed exceptions would still be required to enter into an information sharing agreement with intermediaries.

We believe that any mutual fund that does not impose a redemption fee should not be required to enter into information sharing agreements with intermediaries. Mutual funds that do not impose redemption fees do not need this information, and sharing this information imposes risks to the privacy of investors and burdensome compliance costs on intermediaries.

B. The New Rule Should Be Modified to Ensure that it Does Not Conflict with the Consumer Privacy Protection Provisions of GLBA.

If intermediaries are required to share non-public personal information ("NPI") with unaffiliated mutual funds, they would have to change their privacy notices and policies to reflect this change (*i.e.*, because most intermediaries only share information with affiliates and other permissible parties they would have to comply with opt out requirements under GLBA). Social Security number information is highly sensitive NPI that is often used in connection with identity theft.

To the extent that intermediaries are only service-providers to insurance companies (contract owners, for example, would be "customers" of insurance companies; group contract participants would, at least, be "consumers" of the insurance company), such sharing would breach the service provider's contract with the applicable insurance company.[6] Under the NAIC GLBA Regulation, an insurance company is obligated to enter into contractual agreements with service providers that prohibit the service providers from disclosing or using NPI other than to carry out the purposes for which the NPI is disclosed.[7] The duty of the service provider with respect to such NPI cannot be broader than that of the related insurance company. To the extent that the new rule effectively requires insurance companies to disclose detailed NPI about their separate account customers and consumers as a condition to their right to acquire legal and beneficial ownership of mutual fund securities for the separate account, the new rule sweeps broadly into the exclusive purview of State insurance regulators, as well as altering the competitive balance between insurance companies and mutual funds.

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[6] *See Privacy of Consumer Financial and Health Information Regulation*, IV NAIC Model Laws, Regulations and Guidelines 672-1 ("NAIC GLBA Regulation").

[7] NAIC GLBA Regulation, § 15(A)(1)(b).

C. The New Rule's Impact on Separate Account Customers Should be Reviewed

The new rule rests on an unstated assumption that the Commission should reexamine. It assumes that mutual funds or, alternatively, recordkeepers, have the power to impose redemption fees on identified separate account customers and consumers as if they were "customers" of the mutual fund. In fact, customers and consumers holding interests in a separate account are *not* customers of the mutual funds – only the applicable insurance company is a customer of the mutual fund. Similarly, employee benefit plans governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA") are the legal and beneficial shareholders of mutual funds offered by the plan. The participants and beneficiaries of ERISA-governed plans do not hold legal and beneficial title to those mutual fund shares.[8] Insurance companies do not have unfettered discretion to determine how the fees are allocated to customer accounts without taking into consideration applicable State and insurance laws governing separate account plans. To the extent that the new rule is intended to give mutual funds the authority to allocate a redemption fee to individual Contract owners, such authority may conflict with applicable State and insurance laws.

D. The New Rule Should Be Modified To Ensure that it Does Not Permit Mutual Funds to Use Disclosed Information for other Purposes.

In addition to the tension with State insurance regulations that prohibit sharing NPI, the requirement that intermediaries share NPI threatens the competitive balance between mutual funds and insurance companies. VAs and VULs compete directly with the mutual funds used in separate account products. The information sharing requirements of the new rule put insurance companies providing separate account products at a competitive disadvantage relative to mutual fund companies by forcing the revelation of the NPI of customers and consumers to mutual fund companies, which may exploit the NPI for their own marketing purposes. If the Commission concludes that the new rule is both necessary and appropriate, it should at the very least prohibit mutual funds obtaining such information to use it for any purpose other than considering the applicability of redemption fees. For similar reasons, mutual funds that do not impose redemption fees should not be entitled to the NPI delineated in the rule.

VI. THE COMMISSION SHOULD REITERATE THAT THE RULE DOES NOT REQUIRE RETIREMENT PLAN ADMINISTRATORS TO DISCLOSE THE CONFIDENTIAL INFORMATION OF INDIVIDUAL RETIREMENT PLAN PARTICIPANTS TO MUTUAL FUNDS

Recordkeepers typically acquire detailed knowledge of retirement plan participants, and many recordkeepers have confidentiality provisions in their agreements that prohibit information on individual participants from being shared with third parties.[9] Should intermediaries provide

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[8] *See e.g.,* Letter from Brian H. Graff, Jeffrey C. Chang, and Sal L. Tripodi, American Society of Pension Actuaries ("ASPA"), to Jonathan G. Katz, Secretary, Commission, dated April 21, 2004.

[9] *See* Comment Letter from James A. Klein, President, American Benefits Council, to Jonathan G. Katz, Secretary, Commission, dated May 10, 2004 (regarding confidentiality of participants' personal information).

information to mutual funds, upon request, including, for example, Social Security or tax ID numbers, the intermediary as recordkeeper would be in violation of its agreements. Further, under general fiduciary principles and other laws, the recordkeeper owes a duty to the plan to preserve the confidentiality of information of the plan and its participants. It is not independently free to contract with third parties – including funds – to provide confidential participant level information. Therefore, the new rule potentially conflicts with the duties owed by plan administrators under ERISA and other laws.

VII. THE RULE DOES NOT REQUIRE MUTUAL FUNDS TO CONTRACT WITH INTERMEDIARIES TO RECEIVE INFORMATION ON VA AND VUL CONTRACT OWNERS

The new rule requires that mutual funds contract with intermediaries to receive certain information regarding shareholders in the funds, and for the intermediary to accept certain instructions from the mutual funds. Similar to group retirement plans noted above, Contract sub-accounts invest in mutual funds that represent the investment options for Contract owners. These sub-accounts are at all times the property of the insurance company providing the annuity or VUL, and the insurance company is properly regarded as the shareholder in the mutual fund. A pro-rata portion of the sub-account's investments are used to determine the value of a Contract, but the Contract owners have no right to the securities in the sub-account. They merely have a limited right to direct the investments of the sub-account.

Applying the plain meaning of "shareholder" to the rule, mutual funds are only subject to the information sharing and instruction requirements with respect to the provider of the Contract. Although the term "shareholder" is defined under the rule to include certain other holders of an interest in mutual fund securities, it is our position that VA or VUL Contract owners do not possess any interest in the mutual fund securities of the sub-account. Therefore, mutual funds are not required under the rule to contract to receive the information or impose instructions on Contract providers regarding the transactions of their Contract owners.

VIII. EACH MUTUAL FUND'S POLICY ON SHAREHOLDER IDENTITY AND TRANSACTION INFORMATION SHOULD BE UNIFORM

Assuming that the Commission has the authority to override duties owed by retirement plan intermediaries and to impose administrative obligations on retirement plans, the new rule is unreasonably burdensome. The new rules require mutual funds to enter into agreements with intermediaries to obtain, upon request, certain identity and transaction information and to have intermediaries implement trading restrictions against the traders the fund has identified as violating its market timing policies. If, as a sub-transfer agent of a mutual fund and retirement plan recordkeeper, it is VRSCO's contractual responsibility to monitor plan participant transactions, the burden is likely to be overwhelming because there are such wide variations in the types of identity and transaction information required by different mutual funds. The Life Insurance Companies face a similar responsibility through their customer service and administrative work units. For Contracts, we request that the intermediary be allowed to give only the Contract number to the funds, not the TIN of the Contract owner in order to protect the owner's privacy.

Although the new rules allow mutual funds to obtain shareholder transaction information upon request (as opposed to on a weekly basis, as was originally proposed), nothing suggests that fund companies will alter their existing trading policies, which require intermediaries to submit various shareholder information inconsistently across fund accounts on a regular basis. If VRSCO and other recordkeepers are required to implement identity and trading requirements ***without*** a uniform standard in place, the plan administration costs in managing, programming and submitting such information (on a per account basis) will increase dramatically for each and every retirement plan and variable life insurance provider, and, consequently, for each plan participant and Contract owner. This would be detrimental to all affected retirement plans, participants and Contract owners. Accordingly, we believe that the Commission should require mutual funds to establish a uniform policy with respect to the types of shareholder transaction information that is to be submitted to the fund by intermediaries upon request.

IX. UNINTENDED CONSEQUENCES OF ASSESSING REDEMPTION FEES AGAINST PARTICIPANT- OR CONTRACT OWNER-LEVEL TRANSACTIONS IN OMNIBUS ACCOUNTS

The purpose of the new rule is to reduce the harm to mutual fund investors caused by short term sales which increase the trading costs and liquidity needs of the fund. Assessing redemption fees against omnibus accounts will likely have the unintended collateral result of imposing redemption fees on omnibus account investors when there has been no corresponding harm to other mutual fund investors. We suggest that a definition of "omnibus account" be added to the new rule.

Omnibus accounts place one net trade per day with the mutual fund. This net trade reflects the difference between the purchases and redemptions requested by investors in the omnibus account. Therefore, on any given day, the sole trade placed by the omnibus account reflects some number of both purchases and redemptions by investors, but only one net trade will have an impact on the mutual fund. On some days, certain investors in the omnibus accounts may be short term sellers subject to a mutual fund's redemption fee and the Life Insurance Companies' or VALIC's market timing policies. However, any redemptions they elect may be offset by other investors in the omnibus account who are making purchases. If the volume of purchases on a particular day exceeds the number of redemptions, the mutual fund will experience a net purchase. Under the new rule however, the short term sellers within the omnibus account may be subject to redemption fees even on days when there is a net purchase. It is even conceivable that on a day when net redemptions exactly equaled net purchases, the mutual fund could exact a redemption fee against investors even though there were no trades with the fund. Because redemption fees will be remitted to the fund, assessing redemption fees in these types of trades will have the unintended effect of penalizing certain investors in omnibus accounts whose actions had no consequences to the mutual fund investors.

By rule, the Commission could prohibit levying redemption fees against investors in omnibus accounts on days when the omnibus account has made a net purchase. This would prevent mutual funds from assessing redemption fees on transactions that are harmless to the fund. However, it might also lead to the seemingly arbitrary assessment of fees against omnibus account investors. Investors in the omnibus accounts cannot know whether their trades will take place on a day when there are net investments or net redemptions by other investors in the mutual fund. Therefore, while an investor in the omnibus account will know whether he or she has held the shares for a long term period (and is potentially subject to redemption fees), he or she will not know whether a fee will actually be assessed. An investor who sells shares on subsequent days may find herself paying no redemption fee one day, and being assessed a redemption fee the next, depending on whether other investors in the omnibus account are purchasing or redeeming. The unpredictable assessment of redemption fees would be confusing to investors.

As discussed above, assessing redemption fees against individual investors on omnibus accounts may penalize harmless trades. Prohibiting the assessment of redemption fees when the trades are harmless may lead to the unpredictable assessment of fees.

X. EFFECTIVE AND COMPLIANCE DATES FOR INTERMEDIARIES

The new rule will be effective on May 23, 2005 and the compliance date of the rule is October 16, 2006. The transition period was intended to provide sufficient time for funds and intermediaries to enter into required agreements and make systems changes. However, the amount of time available for intermediaries to comply with the rule will depend on when mutual funds adopt their redemption fee policies and enter into agreements with such intermediaries. We propose that the Commission clarify that a mutual fund is to be in compliance with its obligations by October 16, 2006; yet, upon the entering into an agreement with a mutual fund, financial intermediaries must make necessary systems changes by no later than October 16, 2007, or some other specified date. This will ensure that intermediaries have at least one year from the date at which mutual funds adopt their redemption fee policies to make any necessary system changes. This additional time is necessary due to the current complexity of compliance for intermediaries. Whereas mutual fund complexes will be likely to adopt uniform redemption fee policies, intermediaries will be tasked with managing a tremendous variety of redemption fee policies across mutual fund complexes. The additional time available for systems updating will increase the willingness of intermediaries to enter into such agreements.

XI. SUMMARY AND CONCLUSION

The benefits of uniform and standardized redemption fee policies for intermediaries, retirement plan sponsors, plan participants, Contract owners, and for recordkeepers, include:

- *clarity* for investors, plan sponsors, plan participants and life insurance companies when choosing mutual fund investment options;

- *consistent* policies across all mutual fund investment options in each retirement plan and Contract;
- *uniform* policies that are easier for an investor to understand when making an investment selection or planning transactions;
- *systematic* programming for redemption fees;
- *less confusing* investor communications;
- *streamlined* recordkeeper and mutual fund administration of redemption fee policies;
- *costs to investors* will be less than with a multitude of fee redemption policies; and
- *costs* for recordkeepers and plan and Contract administration will not dramatically increase as they otherwise would if policies are not standardized.

Based on the foregoing, we respectfully request that the Commission set uniform standards across mutual funds in charging redemption fees. Uniform standards provide improved comparability, ease of market timing detection, and greater certainty to investors with respect to the fees charged.

* * *

We would be happy to meet with and assist the staff in designing a uniform redemption fee program for retirement plan participants and Contract owners, at your request. Thank you for allowing us to express our preferences for a uniform and consistent redemption fee policy.

Sincerely,

/s/
Barbara A. Stettner
for O'Melveny & Myers, LLP

cc: American General Life Insurance Company
The United States Life Insurance Company in the City of New York
AIG Life Insurance Company
American International Life Assurance Company of New York
The Variable Annuity Life Insurance Company