

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11579**

*In the matter of*

**INVIVA, INC. and**

**JEFFERSON NATIONAL LIFE INSURANCE COMPANY**

**RESPONDENTS**

**PROPOSED PLAN OF  
DISTRIBUTION**

**I. BACKGROUND**

**A. Institution of Proceedings**

On August 9, 2004, the Securities and Exchange Commission (the "Commission") issued an order (Securities Act Release No. 8456, Securities Exchange Act Release No. 50166, Investment Company Act Release No. 26527, Administrative Proceeding File No. 3-11579) (the "Order") instituting public administrative and cease-and-desist proceedings (the "Proceedings") pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Inviva, Inc. ("Inviva") and Jefferson National Life Insurance Company ("Jefferson National," together with Inviva, "Respondents"). In the Order, the Commission concluded that, based upon certain misleading disclosures, or disclosure omissions, relating to facilitation of the activities of those referred to by the Commission as "market timing customers and brokers" (referred to herein as the "Market Timers"), Respondents had willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 34(b) of the Investment Company Act. In the Order, the Commission also announced that, in anticipation of the institution of the Proceedings, Respondents had, without admitting or denying the Commission's findings in the Order (other than jurisdictional findings), consented to the entry of the Order.

**B. Pertinent Factual Findings**

In the Order<sup>1</sup>, the Commission, among other things, found that the Respondents had permitted and facilitated the carrying out of what the Commission termed a "market timing

---

<sup>1</sup> The Order is available online at: <http://www.sec.gov/litigation/admin/33-8456.htm>.

strategy,” despite disclosures in prospectuses for variable annuities issued by Jefferson National that Jefferson National would limit or prohibit the use of such strategies and that those variable annuities were not designed to accommodate such strategies. The trading patterns of the Market Timers resulted in frequent large transfers among the investment company portfolios (the “Funds”) serving as funding vehicles for the Jefferson National variable annuity contracts. Some of those trades entailed additional transaction expenses for the Funds. The managements of certain of the Funds were aware of, and consented to, the use of their Funds by the Market Timers as part of trading strategies that involved frequent transfers into and out of those Funds. Those Funds will be referred to in this Plan of Distribution as “Consenting Funds.”

### **C. Settlement of Proceedings**

In anticipation of the institution of the Proceedings, Respondents submitted an Offer of Settlement that the Commission determined to accept. Solely for the purposes of the Proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings (other than those relating to jurisdiction) in the Order, Respondents consented to the issuance of the Order, including the sanctions and undertakings imposed by the Order.

In the Order, the Commission ordered that Respondents were joint and severally liable to pay disgorgement in the total amount of \$3,500,000 and ordered Jefferson National to pay civil money penalties in the amount of \$1,500,000, for total payments of \$5,000,000. The Order directed that a Fair Fund be established, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the \$5,000,000 disgorgement and civil money penalties ordered (“Fair Fund”). The Order directed the Respondents to pay the \$5,000,000 disgorgement and civil money penalties within 175 days of the entry of the Order. The Respondents paid the \$5,000,000 amount on February 23, 2005, and on March 3, 2005, the \$5,000,000 was deposited with the U.S. Treasury Bureau of Public Debt (“BPD”).

The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund has been deposited at the BPD for investment in government obligations. Other than interest from these investments, it is not anticipated that the Fair Fund will receive additional funds. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5. The QSF shall be invested in short-term U.S. Treasury securities all backed by the full faith and credit of the U.S. Government of a type and term necessary to meet the cash requirements of the payments to Funds, tax obligations and fees; provided, however, that investments in the U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

### **D. Appointment of Independent Distribution Consultant**

The terms of the Order also required the retention by Respondents of the services of an “Independent Distribution Consultant not unacceptable to the staff of the Commission” to be responsible for developing a plan of distribution for the Fair Fund by Respondents, as described above. Pursuant to the Order, the Respondents retained William Randolph Thompson as their

Independent Distribution Consultant (sometimes referred to herein as the “IDC”).<sup>2</sup> Respondents agreed to pay all costs associated with the engagement of the IDC.

The methodology of the Plan of Distribution was required to be developed by the IDC in consultation with Respondents and be acceptable to the staff of the Commission. The Plan of Distribution is required to “provide for investors to receive, from the monies available for distribution, their proportionate share of losses suffered by virtue of the market timing through Jefferson National’s variable annuity products.”

## **II. ANALYSIS BY THE INDEPENDENT DISTRIBUTION CONSULTANT**

### **A. Distribution in Proportion to Relative Losses**

In furtherance of the Commission directions in the Order, this Plan of Distribution attempts, to the extent practicable, to allocate the amounts to be distributed according to the relative amounts of losses estimated to have been experienced as a result of the actions of the Market Timers that were permitted and facilitated by Respondents. The IDC concluded that many of the transfers by the Market Timers appear to have been in furtherance of a strategy that took advantage of pricing of their portfolio securities by the Funds at the close of the New York Stock Exchange at 4:00 p.m. eastern time, using the closing prices of those portfolio securities in the markets on which those portfolio securities primarily traded (typically foreign markets in the case of international funds). Information arising between the time of the closing of foreign markets and the time of the pricing by the Funds of securities traded in those foreign markets created the possibility of an “arbitrage” where the values of the portfolio securities were almost certain to have increased or decreased from the value at the closing of the foreign market. This form of arbitrage is commonly referred to as “time-zone arbitrage.”

Trading by the Market Timers that took advantage of this “time-zone arbitrage” or “stale pricing” situation resulted in the purchase of Fund shares (by separate accounts of Jefferson National on behalf of owners of variable annuity contracts owned and/or directed by the Market Timers) at Fund share prices that were too low, and redemptions of Fund shares at Fund share prices that were too high. Such incorrectly priced transactions diluted the interests in the Funds of other shareholders -- separate accounts purchasing Fund shares on behalf of Jefferson National variable annuity contract owners who were not Market Timers (referred to as “Non-Market-Timer Jefferson Contract Owners”) and separate accounts of other insurance companies purchasing Fund shares on behalf of owners of their variable annuity or variable life insurance contracts (referred to as “Non-Jefferson Contract Owners” together with the Non-Market Timer

---

<sup>2</sup> From 1976 to 1988, the IDC was a member of the staff of the Commission's Division of Investment Management, including serving as the Chief of the Office of Insurance Products and Legal Compliance from 1984 to 1988. From 1988 until 2003, the IDC was engaged in the private practice of law, primarily representing life insurance companies in connection with their offerings of variable annuity and variable life insurance contracts and underlying mutual funds and in connection with their sponsorship of publicly offered mutual funds. After retiring from the full-time practice of law, the IDC was Of Counsel to Jorden Burt LLP from January 1, 2004 until March 31, 2009.

Jefferson Contract Owners "Non-Market-Timer Contract Owners").<sup>3</sup> There may have been additional situations in which thinly traded portfolio securities were valued at prices that could be determined to be inaccurate in a predictable way and thus create the opportunity for trading that took advantage of the inaccuracies and similarly diluted the interests of Non-Market-Timer Contract Owners. In estimating dilution, there is no need to differentiate based on the nature of the information that led to stale pricing or time-zone arbitrage. Accordingly, all dilution estimates in this Plan of Distribution have been calculated without reference to the underlying information that could have caused Fund shares to be incorrectly priced.

The IDC concluded that it was appropriate for the terms of the Plan of Distribution to also be affected by the complex and unique circumstances relating to the Funds' shares being sold only as funding vehicles for variable insurance products. Those eligible to receive distributions under this Plan of Distribution are the Funds (the investment company portfolios) harmed by the actions of the Market Timers, whose shareholders are sub-accounts of separate accounts of certain life insurance companies that hold shares of the Funds as reserves for variable annuity contracts issued by those life insurance companies. Thus, the IDC concluded that the ultimate economic beneficiaries of the distributions will be variable annuity contract owners with contract values allocated to sub-accounts that invest in the Funds. The aggregate amounts to be distributed were fixed by the terms of the Order, including the undertakings to which Respondents consented. The Fair Fund to be distributed will remain fixed at \$5,000,000 plus escrow earnings (and minus taxes and fees paid) regardless of the amount of actual losses estimated using the methodology employed by the IDC in developing this Plan of Distribution. Estimates of the amount of losses that may have been suffered by various Funds nonetheless have been made by the IDC so that the *relative* amounts of those losses can be computed and percentages created that can provide a basis for dividing the Fair Fund in the manner contemplated by the Order.

Because any investor, even one with a buy-and-hold strategy, would have an initial purchase and final surrender of his or her Contract, the IDC elected to exclude purchase and surrender transactions from the damage analysis. The damage from Market Timers was presumed by the IDC to relate to their excessive and abusively-timed transfers, not their initial purchases or final surrenders of their Contracts. While certain transfer transactions by Market Timers were designated as portfolio rebalancing transactions in Respondents' records, examination of those transactions revealed that they were of the same short-term (usually one-day) nature as the other Market Timer transfers and thus were included in the damage analysis.

### *1. Sources of Losses*

Conceptually, the IDC concluded that there are two distinct types of damage that could have been caused by the actions of the Market Timers that were permitted and facilitated by the Respondents. First, there may have been dilution of the interests of other Fund shareholders as a

---

<sup>3</sup> For purposes of this Plan of Distribution, all Non-Jefferson Contract Owners were presumed by the IDC not to have been involved in time-zone arbitrage or other abusive exchange activities. Even though the IDC, based upon his experience in the variable annuity business, believed that some Non-Jefferson Contract Owners likely were engaged in such activities, the IDC concluded that attempting to identify them would be beyond the scope of the Proceedings, which focus solely on the abusive activities of the Market Timers.

result of incorrectly priced Fund shares used in transfer transactions by the Market Timers. Second, there may have been excess portfolio transaction costs caused by the churning of the Funds' investment portfolios due to frequent, short-duration transfers of contract values among the Funds by the Market Timers.

Dilution could occur if Market Timer allocations to a sub-account that invests in a Fund (for convenience, referred to as a purchase of Fund shares and to the Non-Market-Timer Contract Owners as shareholders, even though such purchases are made and held by the relevant sub-accounts of the separate accounts that invest in Fund shares) were effected at a Fund share price ("NAV") that was lower than it "should have been," or if allocations out of such a sub-account (for convenience, "redemptions") if an accurate "fair market value" of the Fund's portfolio securities were used in computing the Fund's NAV (as opposed to prices based on an earlier market close or ones based on recent trades in thinly traded securities). Even if a Fund purported to use "fair market valuation," as indeed was the case for some Funds, such dilution could nonetheless have occurred if the methods used in fair market valuation were imperfect. Accordingly, the IDC did not attempt to distinguish among the Funds based on whether or not they attempted some form of fair market valuation.

Excess transaction expense losses would include the marginal costs incurred by a Fund when it bought or sold portfolio securities as a result of the purchase or redemption of its shares in connection with a transfer transaction by the Market Timers. Typically, the largest of such expenses could be expected to be brokerage commissions and dealer spreads. Such expenses would not have been incurred but for those transfers and the amounts of such expenses are shared equally among all shareholders of the Fund.

## *2. Methodology Used in Estimating Loss Amounts*

The IDC concluded that there is no perfect way to measure dilution resulting from miscalculation of NAV amounts due to "Interim Information" that becomes public between the time of closing of a market on which a Fund's portfolio securities are traded and the time of calculation of that Fund's NAV. However, the IDC reasoned that if one assumes that the Interim Information will affect the price of those portfolio securities on the exchange on which they are traded on the subsequent day of trading, then the impact of the Interim Information should be reflected in the price of those portfolio securities at the close of the next trading day for that exchange.

a. NAVs vs. UVs. One way to estimate the amount of trade-day dilution would be to recalculate the purchases and redemptions of Fund shares as a result of transfers by the Market Timers using the Fund NAVs from the *next* valuation day (non-holiday Monday-through-Fridays). That method of estimating dilution, which the IDC concluded normally should generate a reasonable approximation of dilution, was acknowledged by the IDC to be imperfect. For example, even newer market-climate or security-specific information could develop that overwhelms the impact of the Interim Information prior to the next day's pricing of the Fund's shares or prevailing market trends could overwhelm and thus mask the impact of the Interim Information on Fund NAVs. In addition, when a Fund distributes dividends on the next valuation day, the Fund's NAV will not accurately measure the trade-day dilution.

The transaction data readily available for the Market Timers' trades includes the separate account sub-account unit value ("UV") at which each trade was effected. Changes in UVs from day to day are based upon changes in the underlying Fund's NAV, but have the advantage of also reflecting any dividends distributed by the Fund on that date. Thus, on a day when a Fund declared a dividend, the Fund's NAV might not change at all, despite positive investment performance, but the UV change would reflect that performance. The UVs are not exactly the same as the Fund NAVs. The UVs reflect the Fund's investment performance, reduced by the amount of daily asset-based mortality and expense risk charges imposed under the applicable variable insurance contract. The IDC concluded that the difference between estimates based on UVs and those based on NAVs would be very small. Any difference would reflect only the deduction of one day's mortality and expense risk charge on the day of the transaction and such a deduction on transactions that resulted in purchase of Fund shares would effectively be offset by an opposite small difference in the next day's transaction that resulted in a redemption of Fund shares. Estimates of aggregate Market Timer dilution using the two methods were within 0.62% of one another, after discrepancies due to dividends declared in the last 6 months of the period the Market Timers were active were excluded.

The difference between the UV calculated when the Market Timers allocated values to a separate account sub-account that invested in underlying Fund shares and the UV that would have been paid using the next business day's UV were used by the IDC to estimate the magnitude of dilution of the interests of others with contract values allocated to the Fund. The increase or decrease in the UV that happened the day after the transaction can be viewed as the increase or decrease that "*should*" have occurred on the day of the transaction, had perfect fair market valuation procedures been employed by the Fund.

The IDC reasoned that using the next-day UV to estimate dilution is, in effect, an attempt to employ "hindsight fair market valuation." In some cases, there would be no apparent dilution at all, but rather an apparent benefit.<sup>4</sup> But, the IDC believed that when all the Market-Timer-transfer-related transactions for a Fund in the entire period of the charged violations (October 23, 2002 through October 30, 2003) are identified, and the "beneficial" ones were netted against the "dilutive" ones, the aggregate dilution amounts for the various Funds should provide a reasonably reliable estimate of the *relative* aggregate dilution amounts for the various Funds. The calculation used by the IDC simply repriced the Market Timer transfers as if the next business day's UV had been used and compare that to the results of the actual trade-day UV pricing. According to the IDC, the difference in the results would represent the approximate amount of dilution (or benefit) to the Fund as a result of the Market Timers' abusive transfers.

b. Portfolio Transaction Expenses. The IDC concluded that there is no simple or precise way to measure excess portfolio transaction expenses caused by the Market Timer transfers. For some of the Funds, the most common such expense is brokerage commissions and disclosure and reporting forms require that aggregate information about brokerage commissions paid be reported in publicly available documents. No similar reporting about dealer spreads is required

---

<sup>4</sup> In the view of the IDC, whether there was "real" benefit or "real" dilution on a given day would depend upon the accuracy of using next-day UVs to estimate dilution or benefit. If, and to the extent that, the next day UV reflected other factors than the impact of the Interim Information, the apparent benefit or dilution might not be "real."

and such information is not readily available from the Funds whose trading is in a market where commissions are not paid.

Examination by the IDC of brokerage data reported by certain Funds indicated that certain of the Consenting Funds must not have been investing in portfolio securities with money that their management knew or suspected to be short term allocations. To the extent that those Funds were aware that the investments could be expected to be of very short duration, the IDC determined that they must have invested in instruments such as short term options or overnight repurchase agreements that would not occasion any brokerage expense. Most of the dilution caused by the Market Timers occurred in those Consenting Funds.<sup>5</sup>

The IDC analyzed brokerage transactions from one of the Consenting Funds with frequent Market Timer transactions and based on this analysis estimated the brokerage expenses that would have been incurred as a result of Market Timer transfers if each transfer resulted in a brokerage expense.<sup>6</sup> These estimates would have produced brokerage expenses far out of proportion to the Fund's annual brokerage expenses, which strongly suggested to the IDC that the investment adviser of this Consenting Fund did not invest these Market Timer transfer assets in a way that incurred brokerage expense. Based on this conclusion, the IDC determined that excess brokerage expense should not be included as an excess portfolio transaction expense.

The IDC determined that not all transfers by the Market Timers would have caused the Funds involved to incur additional portfolio transaction expenses. If Market Timer transfers into a Fund in an aggregate amount of \$5 million were made on a day when the Fund was overall in a posture of net redemptions of \$10 million, then there would have been *no* additional expense incurred by the Fund because the Fund would have simply offset the \$5 million of transfers in against \$5 million of transfers out and would not have had to purchase portfolio securities as a result of that purchase transaction. In fact, the IDC concluded that such an offsetting transfer could have saved the Fund transaction expenses. Similarly, if Market Timer transfers out of a Fund aggregated \$5 million on a day when the Fund was in a posture of net sales of \$10 million, then the redemptions would merely offset sales and no portfolio securities would have had to

---

<sup>5</sup>The Consenting Funds included those managed by Van Eck Associates Corporation ("Van Eck"). Of the approximately \$5.82 million of estimated dilution, approximately \$3.69 million took place in four Funds managed by Van Eck. See Table labeled "Relative Dilution of and Payments to Underlying Funds at page [9] below. To the extent that a Fund held the moneys from Market Timers' transfers in short term instruments instead of in investments suitable to the Fund's investment objectives and policies, the Fund may have been harmed or may have been benefited, depending upon market movements on that day, but at least the Fund would not have been harmed by excessive transaction expenses.

<sup>6</sup>The analysis of transaction expenses looked at the total brokerage expenses for the year, as reported in SEC filings, for Van Eck Worldwide Emerging Markets Fund, a Fund with frequent Market Timer transactions and converted those expenses to an estimated daily basis point charge by dividing them by the average daily assets of the Fund for that year (used in computing its expense ratio). With a portfolio turnover rate for that Fund of 63% during the year 2003, it would appear that one round-trip brokerage expense would not have been abnormal. Accordingly, the IDC divided the brokerage expense number by two to get a one-way (purchase or sale) number for use in estimating brokerage expenses occasioned by the Market Timers. Daily net sales or net redemptions figures from the Fund were then used to eliminate expenses from Market Timer transfers to the extent that they would have been offset by counter moves of other Contract Owners. The transaction was deemed to incur brokerage expense at the estimated rate only to the extent not offset by counter-moves.

have been sold (and no brokerage commissions incurred in connection with sales of portfolio securities) solely as a result of Market Timer transfers.

For the reasons discussed, the IDC concluded that there would be no simple and accurate way to measure the relative amounts of excess transaction expenses experienced by the Funds. In particular, the IDC concluded that it would be difficult to estimate such expenses without examining the daily transaction data of most of the 39 Funds, because different investment advisers likely had different patterns of investing the money injected into their Funds by the Market Timer transfers. In the context of a distribution of an amount as small as that held in the Fair Fund, such a massive project appeared unwarranted to the IDC. It seemed reasonable to the IDC, however, to distribute the Fair Fund among the Funds roughly proportional to the amount of trading activity by the Market Timers during that period. In the view of the IDC, that methodology of distributing the assets of the Fair Fund constitutes a fair and reasonable allocation of the Fair Fund.

#### **B. Amounts of Distributions to Funds and Algorithms Used in Calculations**

The percentage of the Fair Fund that each Fund would receive will be in proportion to the estimates of historical dilution amounts.

- 1. Estimate the amount of dilution losses (or benefit in some cases) for each Fund. ( $X_1, X_2, \dots, X_n$ ) by re-pricing each Market Timer transfer transaction using the next business day's UV.** The algorithm used by the IDC to calculate dilution/benefit from an individual Market Timer purchase transaction (*i.e.*, a transfer into a Fund) was: Dilution/Benefit = [(Absolute value of the purchase) x (Transaction Day UV)] - [(Absolute value of the purchase) x (Next Day UV)]. When the resulting number was negative, it reflected dilution; when it was positive it reflected benefit. Similarly, the calculation of dilution/benefit for a redemption transaction (*i.e.*, a transfer out of a Fund) was: Dilution/Benefit = [(Absolute value of Transaction) x (Next Day UV) - (Absolute value of Transaction) x (Transaction Day UV)]. Once again, when the resulting number was negative, it reflected dilution; when it was positive, it reflected benefit. The dilution/benefit was allocated to the Fund involved in the transaction and the amount of dilution or benefit to that Fund was the total of those of the individual transactions. In this calculation within a Fund, the dilution/benefit to the Fund was a number that netted benefits and dilutions from the individual transactions.
- 2. Aggregate the total amount of dilution for each Fund that experienced net dilution (as opposed to net benefit, as was the case for ten Funds), to create a total amount of estimated dilution damage (Z) and then create a percentage ( $P_1 \dots P_n$ ) for each diluted Fund by dividing each individual amount ( $X_x$ ) by the total for all the Funds (Z).**
- 3. Multiply the percentage for each diluted Fund ( $P_1 \dots P_n$ ) times the amount to be distributed from the Fair Fund to create a distribution amount for each Fund ( $D_1 \dots D_n$ ).**



Using the foregoing methodology results in the following:

<b>Relative Dilution of and Payments to Underlying Funds</b>			
<b>Fund Name</b>	<b>Estimated Transfer Dilution</b>	<b>Percent of Transfer Dilution</b>	<b>Payment from \$5m Fair Fund</b>
Van Eck Worldwide Bond	-\$1,760,836.01	30.23584026%	\$1,523,236.96
Van Eck Worldwide Emerging Markets	-\$1,040,540.11	17.86742448%	\$900,134.45
American Century VP International	-\$665,740.20	11.43162354%	\$575,908.30
Dreyfus VIF International Value	-\$525,606.50	9.02534598%	\$454,683.59
Van Eck Worldwide Hard Assets	-\$418,788.48	7.19114184%	\$362,279.10
Janus Aspen Worldwide Growth	-\$386,084.86	6.62957823%	\$333,988.36
Van Eck Worldwide Real Estate	-\$233,302.75	4.00611114%	\$201,821.96
Janus Aspen International Growth	-\$231,675.61	3.97817100%	\$200,414.38
Federated International Equity II	-\$175,435.12	3.01244878%	\$151,762.72
Berger IPT International	-\$109,306.37	1.87693220%	\$94,557.07
Dreyfus Stock Index	-\$50,607.88	0.86900301%	\$43,779.09
Federated International Small Company II ***	-\$43,756.55	0.75135684%	\$0.00
40/86 Government Securities	-\$42,543.84	0.73053302%	\$36,803.17
Lazard Retirement Small Cap	-\$38,647.60	0.66362954%	\$33,432.67
Seligman Global Technology	-\$25,508.31	0.43801088%	\$22,066.34
40/86 High Yield	-\$15,869.47	0.27249937%	\$13,728.12
Berger IPT Small Company Growth	-\$13,967.65	0.23984271%	\$12,082.92
Invesco VI High Yield	-\$13,010.13	0.22340082%	\$11,254.60
American Century VP Income & Growth	-\$7,778.02	0.13355876%	\$6,728.49
Federated High Income Bond II	-\$5,690.35	0.09771076%	\$4,922.52
AIM V.I. Real Estate	-\$5,384.98	0.09246702%	\$4,658.36
Third Avenue Value	-\$5,153.06	0.08848468%	\$4,457.73
Royce Micro Cap	-\$4,269.22	0.07330797%	\$3,693.15
Royce Small Cap	-\$1,656.29	0.02844068%	\$1,432.80
Federated Capital Income II	-\$1,393.77	0.02393287%	\$1,205.70
AIM V.I. Basic Value	-\$687.05	0.01179751%	\$594.34
Neuberger Berman AMT Limited Maturity Bond	-\$431.31	0.00740609%	\$373.11
Strong Mid Cap Growth II	0	0	0
American Century VP Value	\$260.79	N/A	0
Rydex US Government Money Market	\$680.64	N/A	0
Pioneer Fund VCT II	\$1,569.69	N/A	0
First American Large Cap Growth	\$2,392.99	N/A	0

<b>Relative Dilution of and Payments to Underlying Funds</b>			
<b>Fund Name</b>	<b>Estimated Transfer Dilution</b>	<b>Percent of Transfer Dilution</b>	<b>Payment from \$5m Fair Fund</b>
Pioneer European VCT II	\$3,137.78	N/A	0
AIM VI Health Science	\$3,234.51	N/A	0
40/86 Money Market	\$4190.55	N/A	0
Rydex US Government Bond	\$5,136.56	N/A	0
Van Eck Worldwide UST	\$7,367.32	N/A	0
Janus Aspen Mid Cap Growth	\$17,117.79	N/A	0
Strong Opportunity II	\$20,496.04	N/A	0
Neuberger Berman AMT Partners	\$26,387.16	N/A	0
Alger American Small Cap	\$134,772.30	N/A	0
<b>Total Dilution (including Benefited Funds)</b>	<b>-\$5,596,927.37</b>		
<b>Total Dilution (excluding Benefited Funds)</b>	<b>-\$5,823,671.49</b>		
<b>Total Payments</b>			<b>\$5,000,000.00</b>

\*This percentage is taken of the total of dilution to all diluted Funds only and does not net out the amount of benefit to any Funds that the IDC found were benefited by Market Timer transfers (reflected in this Table as positive numbers in the column labeled Estimated Transfer Dilution).

\*\*The actual payments will reflect interest accrued on Fair Fund amounts as of the date of distribution, and payment of tax liabilities, tax compliance fees and other costs and will be larger than the amounts shown in the table. The actual payments will be computed by multiplying the percentage in the column labeled Percent of Transfer Dilution times the actual Fair Fund value on the distribution date, whereas the numbers here reflect a percentage only of the original \$5,000,000 Fair Fund amount.

\*\*\*Distribution directly to Federated International Small Company Fund II is not possible because that Fund was liquidated in November, 2003. The insurance company sub-accounts of its separate account investors were also eliminated and contract values allocated to those eliminated sub-accounts were moved to other sub-accounts in accordance with contract owner specifications, so there is no practical way to re-direct a payment to that Fund's ultimate economic beneficiaries at time of liquidation. Accordingly, the relatively small payment that would have been made to that Fund under the above methodology (\$37,567.84 of the first \$5 million) will be re-allocated among the other Funds in proportion to their percentage of transfer dilution.

### III. ADMINISTRATION OF FAIR FUND AND DISBURSEMENTS

In light of the relatively small number of persons to whom distribution of the Fair Fund's assets will be made, and the relatively simple method of distributing those assets, the IDC concluded that it would be appropriate and more efficient if he also acted as the Fund Administrator of the Fair Fund ("Fund Administrator") rather than appointing a third party to serve in that capacity. The Fund Administrator will be responsible for, among other things: overseeing the administration of the Fair Fund, obtaining accurate mailing information for the Funds harmed, preparing accountings, cooperating with the tax administrator for the Fair Fund appointed by the Commission (the "Tax Administrator") in providing the information (if any) necessary to accomplish the income tax compliance, and distributing money from the Fair Fund to the Funds harmed in accordance with this Plan of Distribution.

The Fair Fund disbursement to eligible Funds will be implemented through the United States Department of the Treasury's Financial Management Service ("FMS"), which will electronically transfer funds through the Automated Clearing House ("ACH") or mail a check to each payee. The Commission staff will provide the Fund Administrator with appropriate proprietary software for compiling the information necessary to be submitted to FMS. The Fund Administrator will compile the information into the specified file format and submit this electronic file to the assigned Commission staff. The Fund Administrator will validate the payees and amounts in the file to the Commission staff. The validation will state that the electronic file was compiled in accordance with the Plan of Distribution and provides all information necessary for FMS to make disbursement through the ACH or by check. Upon receipt of a properly validated file, the Commission staff will obtain authorization from the Commission to disburse pursuant to SEC Rule 1101(b)(6) (the "Order to Disburse"). When the electronic file and validation are approved and the Order to Disburse is entered, the Commission staff will transmit the electronic file to FMS for the transfer of funds pursuant to the following FMS procedures.

Within 24 to 48 hours of receipt by FMS, funds will be transferred by the ACH or checks will be mailed. FMS will notify the Commission staff, which in turn, will notify the Fund Administrator of any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling all errors that result in non-delivery and shall submit a supplemental electronic file for payment of the returned items.

The Fund Administrator also is responsible for accounting for all payments. In the event that any distribution is in the form of a paper check in lieu of an electronic transfer, each check will state on its face that it is valid for one year. After one year from the date on the distribution check, FMS shall notify the Commission staff, which in turn, will notify the Fund Administrator of all uncashed checks. FMS will credit the SEC account for the Fair Fund for the amount of all uncashed checks.

In addition, the Commission staff will be provided copies of letters from the IDC to the management of each Fund to which a distribution is to be made that will briefly explain the source of the ACH or other distribution to the Fund, the reason for the distribution, directions to

deposit the proceeds of the ACH or other distribution into the Fund immediately upon its receipt and directions regarding how Fund management may obtain a copy of the Plan of Distribution, the Order and any order of the Commission approving the Plan of Distribution and providing contact information for the IDC for those who have questions not answered by those sources. The letters will clearly indicate that the money is being distributed from a Fair Fund established by the Commission.

This distribution does not entail any claims-made process. Accordingly, the procedures for making and approving claims contained in Rule 1101(b)(4)<sup>7</sup> are not applicable.

The Commission has appointed Damasco & Associates as the Tax Administrator. (Securities Exchange Act Release No. 51341 (Mar. 9, 2005) The Fund Administrator and the Respondents will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by Respondents. Before submitting a validated payment file to the Commission staff, the Fund Administrator will coordinate with the Tax Administrator to determine whether it is necessary to solicit an IRS Form W-9 from each Fund.

The IDC has requested that the Commission exercise its discretion under Rule 1105(c) to waive the bond normally required by that Rule to be posted by fund administrators who are not Commission employees. Pursuant to 17 C.F.R. §200.30-7(a)(11), bond “may be waived if the fair or disgorgement funds are held at the U.S. Department of the Treasury and will be disbursed by Treasury.” All of the distributions in this matter will be made by FMS directly to the Funds, with no handling of money by the Fund Administrator or any non-governmental entity. The payees, and the relative amounts to be paid by FMS to each, will have been reviewed and approved by the Commission prior to the distributions. The Funds’ investors are insurance company separate accounts underlying variable annuity contracts and not individual investors. The Fund Administrator would have no way to determine the identities of the variable annuity contract owners who would ultimately benefit from the distributions or the relative amounts of the very small benefits each would receive. Accordingly, waiver of the bond for the Fund Administrator is appropriate for this Plan of Distribution.

Respondents will pay all fees and costs (if any) associated with the administration of the Plan of Distribution, including, if applicable, the costs of the actions taken by the IDC as Fund Administrator. Tax liabilities of the Fair Fund shall be paid out first from the interest earned on the funds and if the interest is not sufficient, then from the corpus of the Fair Fund.

The IDC will inform the Commission staff of any material changes in the Plan of Distribution, and will obtain approval from the Commission prior to their implementation. If material changes are required, this Plan of Distribution may be amended upon the motion of the Respondents, the Fund Administrator (if any) or upon the Commission’s own motion.

A residual within the Fair Fund is established for any amounts remaining after all assets have been distributed. The residual may include funds reserved for future taxes and related

---

<sup>7</sup> 17 CFR 201.1101(b)(4).

expenses, distributions from transfers that were not delivered or accepted upon delivery, and tax refunds for overpayment or for waiver of penalties. All undistributed funds will be transferred to the U.S. Treasury after the final accounting by the Fund Administrator (the "Final Accounting") is approved by the Commission. The Fund Administrator will keep records of any distributions from transfers that were not delivered or accepted upon delivery and provide these records to the Commission staff prior to the submission of the Final Accounting.

The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (1) a Final Accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Fund Administrator for approval of, and has been approved by, the Commission, (2) all taxes, fees and expenses have been paid, and (3) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the Final Accounting, the Commission staff shall seek an order from the Commission to approve the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and shall arrange for the termination of the Fair Fund and discharge of the Fund Administrator.

The Fund Administrator will use his best efforts to start distribution within 30 days after approval of the Plan of Distribution by the Commission and to complete distribution within three months of the distribution start date. After issuance of the Order to Disburse, payments will be made to the eligible Funds according to a schedule determined by the IDC after consultation with the Commission staff. Each Fund eligible to receive a distribution will be notified that the allocated monies should be deposited directly into the Fund's asset base, without prior deduction of any administrative or other fees.

For good cause shown, the Commission staff may extend any procedural dates set forth in this Plan of Distribution.

The Treasury Regulations under IRC §§ 6041, 6045, and 6049 do not require the Fair Fund to issue IRS information returns with respect to distributions to corporations. Because all distributions in this matter will be made to corporations, they will not present the tax reporting issues that could arise in connection with distributions to individual investors. Accordingly, the IDC has determined that there is no need to provide to Funds receiving distributions from the Fair Fund any information about the tax ruling obtained by Respondents relating to settlement distributions made to individual investors.

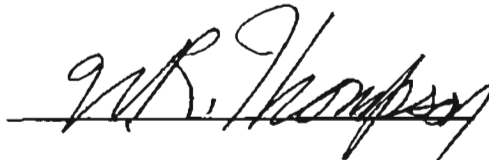
#### **IV. PUBLIC NOTICE AND OPPORTUNITY FOR COMMENTS**

Notice of the Plan of Distribution will be published in the SEC Docket, on the Commission website (<http://www.sec.gov>) and on Respondents' website (<http://www.inviva.com/about/press.cfm>). Any person or entity wishing to comment on the Plan of Distribution must do so in writing by submitting their comments within thirty days of the date of the notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (ii) by using the Commission's Internet comment form ([www.sec.gov/litigation/admin.shtml](http://www.sec.gov/litigation/admin.shtml)); or (iii) by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Comments submitted by e-mail or via the Commission's

website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-11579) in the subject line. Comments received will be available to the public. Commenters should only submit information that they wish to make publicly available.

Submitted on: July 13, 2009

By:

A handwritten signature in black ink, appearing to read "W.R. Thompson", written over a horizontal line.

William Randolph Thompson  
Independent Distribution Consultant for  
INVIVA, Inc. and  
Jefferson National Life Insurance Company