

## ■ INSURANCE PLANNING

# 2019—Likely to Be a Tumultuous Year for Life Insurance

By Ben G. Baldwin, Jr.

The stars are aligned to make all of us who deal with life insurance: litigators, regulators, the entire estate planning team, policyowners and insureds, very busy in 2019.

### The Stars:

- The period of long low interest rates, that has plagued life insurers' general accounts and interest rate driven universal life, appears to be over.<sup>1</sup>
- Our aging population is recognizing life insurance for its accumulation feature for retirement value and the death benefit for its legacy value.<sup>2</sup>
- Congress is working to make life insurance even a more valuable asset for baby-boomers with the bi-partisan H.R. 7203 (the "Long-Term Care Account Act"). If enacted, this legislation would permit seniors to use life insurance they already own to fund a wide range of health care costs, including long-term care expenses and long-term care insurance premiums, without the income taxation issues of life settlements.<sup>3</sup> Watch for insurance companies to design credible Optional Modes of Settlement around that legislation that will reduce seniors' dependence on, and expenses of, the Life Settlement market place.
- The SEC is asking for your input on proposed summary prospectuses intended for life insurance and annuities.<sup>4</sup>

- Many credible independent services are becoming available to help you and your clients deal with the life insurance issues.

The noted actuary James Charles Henry Anderson (1931-1995) developed a new method for pricing life insurance products in 1959 that is the dominant one in use today. On November 18, 1976 addressing the Southeastern Actuaries Club under the presentation title: "*A Critique of Traditional Life Insurance Products and Distribution Systems*," Anderson asked his fellow actuaries: "Is it fair and reasonable that a policyholder should have forty-one percent of his premium consumed by expenses and a further five percent consumed by profits?"<sup>5</sup>

The life insurance industry basically ignored his question until now, some forty-two years later. But no longer! The events and innovations of 2018 that will be addressed in 2019 will cause the creative destruction that Actuary Anderson warned us about in his many addresses to his fellow professionals throughout his career.

It was at an early 1990s annual meeting of the Wolters Kluwer Advisory Board that a participant asked, "Why is life insurance like the third rail in estate planning discussions?" The resounding response from the rest of the Board was "It's the commissions!!!"

In 2008, TIAA Life Insurance Company came to market with the first credible fiduciary-friendly, no-commission, no-surrender charge variable universal life insurance contract called Intelligent Life.<sup>®</sup> It became available serving those not willing to *sell* life insurance, but willing to *help* buyers buy

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life insurance. It had a slow start. Some advisors objected because there was only one product and they felt the need to provide choice. Today, the Life Insurance Marketing Association (LIMRA) reports for 2017 show that the average face amount for TIAA Intelligent life policies is \$1.5 million with an average annual premium of almost \$25,000. Intelligent Life (IL) ranks 10th in annual premium per policy, seventeenth in policy count and fifth in total premium . . . in a policy that offers no incentive for anyone to sell it . . . other than the best interests of their clients. There also could be an AUM charge for the assets embedded in the product for the necessary ongoing management of the contract over the years as the economic environment and the needs of the policyowner change.

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The following are the best business models that I am aware of, available to help advisors and consumers deal with the opaque world of life insurance contracts and illustrations. This list should be particularly valuable to all in the legal community who may be involved in life insurance litigation, which is rampant these days. All are available for consultations and many will provide expert witness services.

### Independent Life Insurance Help Is Available

Bobby Samuelson is the brains behind The Life Product Review website (<https://lifeproductreview.com/>). This website provides independent and objective life insurance product intelligence through weekly articles on life insurance issues and quantitative reviews of new product offerings. Bobby is a “Wonk” in the best sense of the word. He works for the life insurance advisors’ benefit. He is

preoccupied with arcane details and procedures of the life insurance industries’ efforts to create linear, regulator-approved illustrations. He exposes the anti-consumer tricks insurance companies use to make their illustrations the most attractive to sell and most likely to disappoint.

ITM TwentyFirst is a dedicated team of independent life insurance servicing professionals. They have the data, tools, team and experience to help advisors, and especially trustees of life insurance trusts, who are seeking to meet their fiduciary responsibilities and provide credible reviews of the life insurance by addressing the complexities of life insurance and longevity risk.

ITM TwentyFirst companies formed the Life Insurance Trust Company to provide successor trustee and fiduciary services while leveraging the knowledge and expertise of the ITM TwentyFirst family of companies. Unique to this website, <https://lifeinsurancetrustco.com/> is the free availability of a great source of information on trust owned life insurance (TOLI), **The TOLI Handbook**, under

the tab More. It covers such topics as:

- The Irrevocable Life Insurance Trust (ILIT);
- Developing a TOLI Administration System;
- Whole Life Insurance (WL);
- The Mechanics of the Universal Life Chassis;
- Current Assumption Universal Life (UL);
- Guaranteed Universal Life (GUL);
- Variable Universal Life (VUL);
- Equity Index Universal Life (IUL).

The chapters on the various forms of life insurance provide an objective discussion of the risks and potential rewards of the different forms of life insurance. It will be very helpful to advisors as they discuss life insurance alternatives with clients, particularly those who may be enamored by the simple sales spiel for equity index universal life, market exposure with no downside risk. IUL life is, in reality, a most complex life insurance contract requiring intensive, lifetime management.

Also providing a great deal of help over many years to TOLI Trustees we have the Whitelaws. E.

Randolph Whitelaw and George P. Whitelaw. They have been insurance consultants since the mid-1980s and are available at <http://www.lifeselementpartners.com/>. Randy is the Managing Director of **Trust Asset Consultants, LLC** in St. Louis, the originator of the concept of “dispute defensible life insurance risk management” and co-author of *The Life Insurance Policy Crisis—The Advisors’ and Trustees’ Guide to Managing Risks and Avoiding Client Crisis*. George P. Whitelaw is managing director of The TOLI Center, LLC in St. Louis.

Henry Montag, in practice since 1976, is the Principal of **The TOLI Center East** with offices in Long Island and New York. TOLI Center East available at <https://www.thetolicentereast.com/> Henry provides independent, fee-based performance evaluation for private trustees, family offices, their advisers and institutional trustees. The intent is to analyze the performance of a client’s existing privately-owned and/or trust-owned life insurance portfolio, to protect, monitor and maximize current benefits and assets earmarked for the next generation. Henry and E. Randolph Whitelaw are the co-authors of *The Life Insurance Policy Crisis*, American Bar Association 2017.

Your Life Insurance Solution, available at <https://www.yourlifeinsurancesolution.com/>, Michael Brohawn CFP®, CLU® is the principal of the firm that provides independent counsel for policyowners, trustees, financial advisors, attorneys and CPAs on the practical process necessary to maximize the value of existing and new life insurance.

Richard (Dick) Weber, Principle of The Ethical Edge is another one of the most generous contributors of his expertise to his fellow professionals. The Ethical Edge provides fee-for-service consulting in a number of different areas, from life insurance policy management to technical and due diligence perspective on legal cases involving life insurance. Dick has been a mentor to me, and to many like me, since I met him through The Society of Financial Professionals where he has served in all the officer positions and as its President. His contributions to Society members include innumerable life insurance educational sessions, the “Life Insurance Questionnaire” and my favorite “The Dynamic Illustration System,” a multiple, variable input, computer-based visual illustration system that he created with Chris Hause FSA, MAAA, CLU. Chris

is the Chief Actuary and a principal in Ethical Edge Insurance Solutions, LLC. and has also formed the firm Hause Actuarial Solutions, Inc. The Dynamic Illustration System shows how the trajectory of a permanent life insurance policy changes visually on an I-pad or computer as premiums are adjusted, as death benefit is adjusted, and as the insurance companies exercise their rights to change the non-guaranteed policy elements. This dynamic illustration system allows all life insurance intermediaries to see and to show clients how these variables affect the performance of a life policy. Only through such a visual presentation can a prospective purchaser determine if the purchase fits their needs and, very importantly, once a policyowner provide ongoing management of the contract by observing the impact of changes on policy trajectory made by outside influences and/or policyowner behavior such as varying premium payments, to make sure the policy accomplishes their objectives. Linear, paper, static-input illustrations cannot do this.

Dick, and each of the experts named above, have been very busy providing expert witness services as a result of the many law suits brought by policyholders against life insurance companies because the life insurance policy, they purchased did not follow the trajectory illustrated by the paper, linear illustration they received when they bought the policy.

All of us concerned with life insurance issues should be tuned into the blogs of Joseph M. Belth Ph.D. ([www.josephmbelth.com](http://www.josephmbelth.com)). Professor Belth, the author of **The Insurance Forum**, a recently completed compendium of his forty years of Insurance Forum columns entitled, *The Insurance Forum, a Memoir and Life Insurance, A Consumers Handbook*, is professor emeritus of insurance in the Kelley School of Business at Indiana University and is frequently referenced in these columns.

So, there you have it. My list of the best brains in life insurance.

## SEC Asks for Help Drafting Summary Prospectus for Life Insurance and Annuities<sup>6</sup>

Oct. 30, 2018

Updated Disclosure Requirements and Summary Prospectus for Variable Annuity

**and Variable Life Insurance Contracts  
(Conformed to Federal Register version)**

**File No:** S7-23-18

**Comments Due:** February 15, 2019

Comments received are available for this proposal.

Submit comments on S7-23-18

**See Also:**

Appendix A: Hypothetical Initial Summary Prospectus

Appendix B: Hypothetical Updating Summary Prospectus

Appendix C: Feedback Flier—Variable Annuity Summary Prospectus (PDF)

Proposed Form N-3

Proposed Form N-4

Proposed Form N-6

All are invited by SEC.gov Press Release, 12/23/2018, entitled “SEC Proposes Disclosure Improvements for Variable Annuities and Variable

*How will agents adhering to their fiduciary duties be able to keep marketing the commission-based product in lieu of the no-commission product while still adhering to the best interest of the consumer imposed upon them by both regulators and their professional associations?*

Life Insurance Contracts” to provide input as to how the SEC can improve insurance contract disclosures via a layered disclosure Summary Prospectus available online.

The proposed enabling regulation is 698 pages long, so advice is sorely needed from any interested parties to help the SEC reduce the complexity of the proposal. The SEC says this effort is needed to protect investors who have over two trillion invested in these variable<sup>7</sup> insurance products that provide benefits that they cannot get elsewhere (a combination of capital market exposure and

insurance guarantees). The SEC believes investors benefit from a diversity of choices and that the companion of choice is information. Investors need information to understand whether an investment option can fit within their financial playbook. Questions to the brain trust named above: Do linear paper illustrations, provided and presented to consumers to help with their buying decisions, actually help, or do they manipulate numbers and mislead consumers? If you believe they mislead, it is time to suggest a viable alternative to the SEC . . . please! The SEC has stated that they are looking to the future and the use of technology. The invitation for your input doesn’t get any better than that to recommend a dynamic electronic, variable-input illustration system that visually depicts the trajectory of a policy into the future as estimated returns change and as the insurance company adjusts its non-guaranteed elements, such as COIs and expenses. Only with such a tool can consumers and intermediaries understand the risks of a variable life insurance contract and understand how to manage the contract to accomplish policyowner objectives.

The good news is the SEC has opened the door for on-line delivery. In a speech before the American Law Institute Continuing Legal Education Conference on life insurance products on November 8, 2018,

Dalia Blass, the Director of the SEC Division of Investment Management stated the following. “The Summary Prospectus would not be a self-contained disclosure vehicle, but rather one element in a layered disclosure framework.” She went on to comment on the use of technology saying “. . . the proposed amendments would require the use of structured data for certain disclosures including the fee tables . . . to allow users to efficiently analyze and compare information about variable contracts, including, most importantly, their costs.”

Now, harkening back to a statement I made at the beginning of this column, indicating that the life insurance industry has been ignoring the warnings noted actuary Anderson made 42 years ago. The events and innovations of 2018 will be addressed in 2019. As they are addressed, they will cause the creative destruction that Anderson warned us about in his many addresses. I am referring to the following new life insurance business model now being promoted on the web by DPL Financial Partners, Commission-Free Life Insurance.<sup>8</sup>

## Commission-Free Life Insurance

Although TIAA Life Insurance Company has been marketing no-commission, no surrender charge life insurance since 2007, it is the only kind of life insurance TIAA sells. It has been applied to client needs mostly by RIAs. The commission-compensated life insurance sales folks have just ignored it. But no more. The pending SEC Summary Prospectus, with internet-provided layers of amplifying and supplement disclosures, will be a challenge for the insurance companies marketing both commission and no-commission life insurance. How will an insurance company selling both commission life insurance and a no-commission model explain it in the

SEC proposed Summary Prospectus? How will they explain it to their commission compensated partners? How will agents adhering to their fiduciary duties be able to keep marketing the commission-based product in lieu of the no-commission product while still adhering to the *best interest of the consumer* imposed upon them by both regulators and their professional associations? Which insurance companies will have the most difficulty creating their Summary Prospectus?

It is likely that at least those companies listed on the DPL Financial Partners web-site that market both commission product and no-commission product such as Allianz, AXA, Great American, Great West, Integrity Companies and Security Benefit will struggle with the necessary disclosures of the SEC Summary Prospectus. The list of companies is at <https://www.dplfp.com/for-carriers/>.

## Conclusion

As a result of all of the above it is going to be a busy 2019 for all life insurance manufacturers and all of us seeking to help consumers deal with, own and maintain life insurance contracts. New business models will be created, and old ones may face destruction. Stand by.

## Endnotes

<sup>1</sup> ITM TwentyFirst Blog, The Big Four (Mutual Whole Life) Carriers Announce Their Dividends for 2019, December 26, 2018, <https://youritm.wordpress.com/2018/12/26/the-big-four-carriers-announce-their-dividends-for-2019/>.

<sup>2</sup> [https://en.wikipedia.org/wiki/Baby\\_boomers](https://en.wikipedia.org/wiki/Baby_boomers).

<sup>3</sup> Google H.R. 7203.

<sup>4</sup> SEC.gov Press Release, 12/23/2018, SEC Proposes Disclosure Improvements for Variable Annuities and Variable Life Insurance Contracts.

<sup>5</sup> The Papers of James C.H. Anderson, The Actuarial Education and Research Fund, Schaumburg, Illinois, © 1997, p 51.

<sup>6</sup> SEC.gov, Regulations, Proposed. <https://www.sec.gov/rules/proposed/2018/33-10569.pdf>.

<sup>7</sup> VedderPrice has created an excellent 5 page, *The SEC's Variable Contract Prospectus and Disclosure Enhancement Proposals – Synopsis and Areas for Industry Comment*, November 2018, by W. Thomas Connor, Nathaniel Segal and Emily T. Rubino. Available at <https://www.vedderprice.com/-/media/files/vedder-thinking/publications/2018/11/vedder-price-bulletin--the-secs-variable-contract.pdf>.

<sup>8</sup> DPL Financial Partners available at <https://www.dplfp.com/>.