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RECEIVED
Division of Investment Management
1987

November 20, 1987

W. Randolph Thompson, Esquire
Chief, Office of Insurance Products
and Legal Compliance
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

PUBLIC AVAILABILITY DATE: 12-08-87

ACT	SECTION	RULE
1940C	22(c)	22c- 1

Re: Fidelity Investments Variable Annuity Account I and Rule 22c-1 under the Investment Company Act of 1940 (the "1940 Act")

Dear Mr. Thompson:

We are writing on behalf of Fidelity Investments Life Insurance Company ("Fidelity Life"), Fidelity Investments Variable Annuity Account I (the "Account"), and Fidelity Distributors Corporation ("Distributors") to request the staff's advice that it will not recommend that the Commission take any enforcement action under Section 22(c) of the 1940 Act and Rule 22c-1 thereunder if initial purchase payments under certain variable annuity contracts issued by Fidelity Life and funded by the Account are allocated to the investment subaccounts of the Account in the manner described below.

Fidelity Life is a stock life insurance company organized under the laws of Pennsylvania. It proposes to issue certain variable annuity contracts ("contracts"). The contracts will be funded by the Account, which is a separate account established under Pennsylvania insurance law and a unit investment trust registered under the 1940 Act on Form N-4, Reg. No. 33-16966. The Account currently has five investment subaccounts, a Money Market subaccount, High Income subaccount, Equity-Income subaccount, Growth subaccount, and Overseas subaccount. Each subaccount invests in shares of a specific corresponding portfolio of the Variable Insurance Products Fund, an open-end, diversified management investment company registered under the 1940 Act, Reg. No. 2-75010. Additional subaccounts and portfolios may be added in the future. Distributors is a broker-dealer registered under the Securities Exchange Act of 1934 and is the principal underwriter of the contracts.

Under several states' insurance laws, a purchaser of a variable annuity contract is given ten days after he or she receives the contract to review it and determine whether to retain it (the "free look" right). A person who chooses not to retain the contract can, within that period, return the contract to the issuer's office or the agent who sold the contract. If a purchaser exercises this free look right, the contract will be cancelled and the purchaser will be refunded the purchase payment or, under some state laws, all charges deducted prior to the allocation of the payment to the separate account plus the owner's account value as of the end of the valuation period (i.e., business day) in which the returned contract is received. In other words, some states permit the issuer to refund the payment plus or minus investment performance while a few states mandate the return of the payment without adjustment for negative investment performance.

Fidelity Life does not believe it is appropriate or desirable for Fidelity Life to assume the investment risk resulting from the fact that some states do not allow an investment adjustment to be made to the amount refunded upon exercise of the free look right. This risk may be significant in that the minimum initial payment required to purchase a contract is $5,000. Thus, some contract owners could exercise the free look right solely in order to avoid the consequences of a market drop and obtain the return of the payment.

Fidelity Life thus proposes to implement the following procedures. The contract, application and prospectus will disclose that the initial payment must be allocated to the money market subaccount during the free look period. In the application, however, the applicant may designate (subject to revocation) how he or she wishes to allocate the initial payment after the free look period expires. The free look period commences with the owner's receipt of the contract. These contracts will be mailed to purchasers. Fidelity Life will assume a five-day mailing time from the contract date. Thus, Fidelity Life will process transfers from the money market subaccount to the selected subaccounts fifteen days after the contract date. If a contract owner exercises his or her free look right, he or she will be refunded the greater of (i) the purchase payment or (ii) the contract value under his or her contract (without reduction for the contingent deferred sales load applicable under the contract) plus any amount deducted from the premium payment prior to its allocation to the Account.*/ This will all be fully disclosed in the prospectus.

Fidelity Life's proposed procedures regarding the crediting of purchase payments will, in our view, be consistent with Rule 22c-1. To

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*/ Fidelity Life generally will not deduct any amount prior to the allocation of the contract owner's payment to the Account. In a few states, however, Fidelity Life may be required to pay premium taxes upon receipt of an owner's payments. If the owner lives in such a state, Fidelity Life will make a deduction for such taxes before allocating the remainder of the payment to the Account.

purchase a contract an applicant must make a purchase payment of at least $5,000 and complete an application form. If the application and initial premium payment can be accepted in the form received, the payment will be applied to the purchase of a contract within two business days after receipt at the Fidelity Variable Products Service Center. The date that the payment is credited and the contract issued is called the contract date. If an incomplete application is received, Fidelity Life will request the information necessary to complete the application. Once the application is completed, the initial premium payment will be applied to the purchase of a contract within two business days after the application is made complete. If the application remains incomplete for five business days, Fidelity Life will return the premium payment unless it obtains the applicant's specific permission to retain the premium payment pending completion of the application.

An owner may make additional premium payments during the life of the annuitant and before the annuity date. The smallest such payment Fidelity Life will accept is $500. These subsequent payments are allocated immediately to the selected subaccounts. These premiums will be credited under the contract based on the next computed value of the selected subaccounts' accumulation units following receipt of the payment at the Fidelity Variable Products Service Center.

Thus, the initial payment will be credited in accordance with Rule 22c-1(c) and all payments will be credited consistent with Rule 22c-1. Moreover, the transfer from the money market subaccount to the other selected subaccounts will be effected as of the end of the valuation period in which the fifteen-day period expires, based on the respective accumulation unit values of the subaccounts at that time.

In our view, Rule 22c-1 is not abridged by the fact that the only purchase order that may be made initially is to purchase shares of the money market subaccount. Neither Rule 22c-1 nor any other provision of the 1940 Act prohibits limiting the offer of shares in one or more portfolios to those who have first made another investment. Further, the applicant's ability in the application to direct (subject to revocation) that, after the free look period is up, amounts should be transferred to other selected subaccounts, does not appear to violate Rule 22c-1. Indeed, in <u>Data*Sys*Tance Inc.</u> (available May 12, 1976), 1976-77 Fed. Sec. L. Rep. ¶ 80,604, the staff in another context interpreted Rule 22c-1 as not prohibiting future transfer orders. <u>Cf</u>. <u>Aetna Variable Annuity Life Insurance Company</u> (available May 23, 1979), 1979-80 Fed. Sec. L. Rep. ¶ 82,408 (no-action position taken regarding future redemption requests). The staff has also indicated that it would not recommend Commission action if a fund or its principal underwriter held a customer's purchase order and funds for an individual retirement account until after the end of a seven-day revocation period mandated by the Internal Revenue Service and consummated the investment at the price next determined after the end of such period. <u>Investment Company Institute</u> (available Dec. 8, 1975).

Furthermore, the practice proposed by Fidelity Life is fully consistent with the policies of the 1940 Act in general and Rule 22c-1 in particular. There is no possibility of backward pricing or shareholder dilution involved here.

Finally, Fidelity Life's proposed procedures regarding the free look right are in the interest of the investing public. An owner exercising the free look right will receive the greater of the premium payment or the contract value (plus any charge for premium taxes deducted prior to allocation of the payment to the Account). Because of the required allocation to the money market subaccount, the latter amount will almost always be greater. This provision is thus more advantageous to the customer than a flat return of premium, which is perhaps the most common form of free look provision for variab'e annuity contracts.*/

For the above reasons, we are of the opinion that the above procedures do not violate Section 22(c) of the 1940 Act or Rule 22c-1 thereunder and we respectfully request that you recommend that the Commission not take any action if the procedures are implemented.

Sincerely yours,

Jeffrey C. Martin

Jeffrey C. Martin

JCM:ch
cc: Heidi Stam, Esquire

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*/ It is noteworthy that premium allocation procedures such as those proposed by Fidelity Life are quite common with respect to variable life insurance. Rule 6e-2(b)(12)(ii) and Rule 6e-3(T)(b)(12)(iii), however, render moot the question of whether such procedures are consistent with Rule 22c-1. From a policy standpoint, there is certainly no reason to distinguish variable life insurance from variable annuities on this issue.

PUBLIC

RESPONSE OF THE OFFICE OF INSURANCE PRODUCTS AND LEGAL COMPLIANCE
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. IP-16-87
Fidelity Investments
Variable Annuity Account I

Based on the facts and representations in your letter dated November 20, 1987, and without necessarily agreeing with your legal analysis, the Division would not recommend that the Commission take enforcement action against Fidelity Investments Variable Annuity I ("Fidelity") under Rule 22c-1 if Fidelity allocates initial purchase payments to the money market subaccount as described in your letter.

We base our position particularly upon your representations that: (1) the contract, application and prospectus will disclose that the initial payment must be allocated to the money market subaccount during the free-look period; (2) all initial purchase payments will be credited to the money market subaccount in accordance with Rule 22c-1(c); (3) the free-look period will last for 15 days and that purchasers will be priced into the subaccount of their choice at the price next computed after the expiration of the 15 day period; (4) a purchaser who exercises the free-look right will be refunded the greater of (i) the amount of the initial purchase payment, or (ii) the contract value (without reduction of any contingent deferred sales load) plus any amount deducted by Fidelity for premium taxes; and (5) the prospectus will fully disclose Fidelity's procedures with respect to a purchaser's exercise of the free-look right.

Please be advised that facts or conditions different from those presented in your letter might require a different conclusion. Furthermore, this response only expresses the Division's position on enforcement action and does not purport to express any legal conclusion on the questions presented. As we agreed, this letter shall become public immediately.

Heidi Stam

Heidi Stam
Staff Attorney
December 8, 1987