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**BY ELECTRONIC DELIVERY**

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Timothy B. Henseler, Esq.  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: In the Matter of VALIC Financial Advisors, Inc.

Dear Mr. Henseler:

This letter is submitted on behalf of American International Group, Inc. (“AIG”), in connection with the settlement of the above-captioned administrative proceeding by the U.S. Securities and Exchange Commission (the “Commission” or “SEC”) with AIG’s indirect, wholly-owned subsidiary VALIC Financial Advisors, Inc. (“VFA” or the “Respondent”). The settlement is expected to result in the entry of an administrative and cease-and-desist order against the Respondent (the “Order”), which is described below.

AIG is a public company and a “well-known seasoned issuer” (“WKSI”) as defined in Rule 405 of the Securities Act of 1933, as amended (“Securities Act”). AIG is a leading global insurance company with a wide range of property casualty insurance, life insurance, retirement solutions and other financial services to customers in more than 80 countries and jurisdictions. It has a diversified mix of business with 64% of its revenues attributable to its General Insurance business and 34% to its Life & Retirement portfolio. VFA represents less than 1% of AIG’s total revenues. AIG, through its direct and indirect subsidiaries, provides a wide array of investment services, and accesses the capital markets frequently.

Pursuant to Securities Act Rule 405, AIG hereby requests that the Commission or the Division of Corporation Finance, acting pursuant to delegated authority, determine that for good cause shown it is not necessary under the circumstances that AIG be considered an “ineligible issuer” under Rule 405.<sup>1</sup>

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<sup>1</sup> In connection with another expected settlement between VFA and the Commission, AIG submitted a separate letter, also dated July 27, 2020, requesting that, for good cause shown, it is not necessary that AIG be considered an “ineligible issuer” under Rule 405.

## BACKGROUND

Respondent has engaged in settlement discussions with the Staff of the Division of Enforcement, which are expected to result in the Commission issuing the Order. Solely for the purpose of settling this proceeding, the Respondent will consent to the entry of the Order without admitting or denying the matters in it (except the Commission's jurisdiction). The Order will find that the Respondent willfully violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rules 206(4)-3 and 206(4)-7 thereunder. Specifically, the Order will find that, from October 2006 to late 2019 (the "Relevant Period"), VFA failed to disclose to certain Florida teachers who were potential and actual clients that VFA's parent, The Variable Annuity Life Insurance Company, doing business under the AIG Retirement Services, Inc. brand name ("VALIC"), provided cash and other financial benefits to a for-profit company owned by Florida K-12 teachers' unions (referred to as the "Teachers Union Entity" in the Order) in exchange for referring teachers to VALIC's and VFA's products and services. The Order will find that VFA received the following benefits from this financial arrangement: (i) the Teachers Union Entity made VFA its preferred financial services partner for members, who were all Florida public school K-12 teachers and other public education employees ("K-12 teachers"); (ii) VFA was given increased opportunities to sell its investment products and services to K-12 teachers not afforded other advisers; and (iii) three full-time VALIC employees, called Member Benefit Coordinators ("MBCs"), were deceptively identified as the Teachers Union Entity's employees, instead of as VALIC employees, at various retirement planning seminars and benefit events attended by K-12 teachers and referred K-12 teachers to VFA for investment advisory services. VFA also failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

The Order will require the Respondent to cease and desist from committing or causing any violations and any future violations of Advisers Act Sections 206(2) and 206(4) and Rules 206(4)-3 and 206(4)-7; censure the Respondent; and require the Respondent to pay a civil monetary penalty of \$20 million. The Order will also require Respondent to comply with undertakings to: (a) cap the management fee for VFA's Guided Portfolio Services ("GPS") advisory product at 45 basis points annually for all K-12 403(b) and K-12 457(b) participants in Florida to the extent to which the plan sponsor has enabled the GPS product, offer this rate to all Florida K-12 403(b) and K-12 457(b) participants for at least five years, and provide notice to current GPS clients of this fee cap; (b) deliver a copy of the Order to K-12 403(b) and K-12 457(b) participants in Florida enrolled in VFA's GPS product and/or owning VFA's Portfolio Director fixed and variable annuity product; and (c) certify compliance with these undertakings in written narratives supported by exhibits within 45 days of the Order.

## DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.<sup>2</sup> As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the WKSI, and a new category of offering communication, the “free writing prospectus.” A WKSI is eligible for important benefits under the Commission’s rules, including the ability to register securities for offer and sale under an automatic shelf registration statement, which becomes effective upon filing and is also eligible for the other benefits of the streamlined registration process, such as the ability to file automatically effective post-effective amendments to register additional securities and pay registration filing fees on a “pay as you go” basis. These rule changes have lessened the risk of regulatory delay in connection with capital formation without impacting investor protection. In addition, WSIs are provided with greater flexibility in terms of communications, including the ability to use non-term sheet “free writing prospectuses” (“FWPs”) in advance of filing a registration statement.

The Commission also created another category of issuer under Rule 405, the “ineligible issuer.” An ineligible issuer is an issuer that has, among other things, been found to have violated the antifraud provisions of the federal securities laws.<sup>3</sup> An ineligible issuer is excluded from the category of “well-known seasoned issuer” and is unable to avail itself of the benefits afforded to a WKSI.<sup>4</sup>

Securities Act Rule 405 authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”<sup>5</sup> The Commission has delegated the function of granting or denying such applications to the Division of Corporation Finance.<sup>6</sup>

AIG understands that the entry of the Order against its subsidiary, the Respondent, would make AIG an ineligible issuer under Rule 405, absent a waiver from the Commission or the Division of Corporation Finance.

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<sup>2</sup> See Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

<sup>3</sup> See Securities Act Rule 405(1)(vi)(C).

<sup>4</sup> See Securities Act Rules 164(e), 405 and 433, 17 C.F.R. §§ 230.164(e), 230.405 and 230.433.

<sup>5</sup> Securities Act Rule 405, 17 C.F.R. § 230.405.

<sup>6</sup> 17 C.F.R. § 200.30-1(a)(10).

## REASONS FOR GRANTING A WAIVER

Consistent with the framework outlined in the Division of Corporation Finance's Revised Statement on Well-Known Seasoned Issuer Waivers issued on April 24, 2014, AIG respectfully requests that the Commission determine that it is not necessary for AIG to be considered an ineligible issuer as a result of the entry of the Order. For the reasons described below, applying the ineligibility provisions to AIG would be disproportionately and unduly severe.

### Nature of the Violation and Whether the Violation Casts Doubt on the Ability of the Issuer to Produce Reliable Disclosures to Investors.

As noted above, the conduct to be described in the Order relates to findings that VFA, during the Relevant Period, failed to inform certain participants in its retirement products offered in the K-12 marketplace in Florida of payments made by VFA's parent, VALIC, to a third-party entity so that third-party could solicit interest in VFA's and its parent VALIC's retirement services and products. VFA further failed to disclose that VALIC employed three individuals who held themselves out as employees of the third-party entity in soliciting interest in VALIC's and VFA's financial services products. The Order will not describe conduct that is related to AIG's role as an issuer of securities or any of its filings with the Commission, as a WKSI or otherwise.

The conduct as described above does not call into question the reliability of AIG's current or future disclosures as an issuer of securities. The Order will not (i) question AIG's disclosures in filings with the Commission as an issuer of securities, (ii) state that AIG's disclosure controls and procedures as an issuer of securities were deficient, or (iii) describe fraud in connection with AIG's offerings of its own securities. The Order will describe conduct at AIG's indirect, wholly-owned subsidiary, VFA, and will not implicate conduct by AIG affiliates other than VFA and VALIC or by the officers or employees of the parent issuer. None of the individuals involved in the conduct described in the Order has been or will be responsible for, or has or will have any influence over, the disclosures of AIG as an issuer of securities or in its filings with the Commission as an issuer of securities.

The conduct described in the Order does not call into question the reliability, quality, or timeliness of current or future disclosures by AIG as an issuer of securities because none of the conduct is related in any way to those disclosures or to its filings with the Commission. AIG's disclosure controls and procedures mandated by Rules 13a-14 and 15d-14 under the Exchange Act were not implicated in any fashion by the described conduct. Furthermore, AIG's ongoing assessment of its need to make disclosures relevant to its investors with respect to AIG's business, or to AIG as an issuer of securities, was not deemed lacking, insufficient, or otherwise called into question by the conduct described in the Order.

The Conduct Described in the Order Does Not Involve Scienter-Based Fraud and Will Not Result in a Criminal Conviction.

The violations charged in the Order are not criminal in nature, and they are non-scienter-based violations of the Advisers Act or rules thereunder. Rather, the violations are negligence-based. An issuer's burden to show good cause that a waiver under Rule 405 is justified is significantly greater when a matter involves the issuer's disclosures and either a criminal conviction or scienter-based conduct.<sup>7</sup> In this matter, neither applies to AIG.

The Responsibility for and Duration of the Misconduct Described in the Order

The Respondent is an indirect, wholly-owned subsidiary of AIG, and it and its parent, VALIC, are two of the primary companies comprising AIG's Group Retirement business unit. The misconduct described in the Order involved the Respondent and its parent VALIC and related to Respondent's practices and disclosures as a registered investment adviser. The Order will describe conduct going back to 2006 and ending in 2019. The Respondent terminated the contract at issue and updated its Form ADV disclosures, as described further below.

The individuals involved in the conduct were not involved with AIG's public disclosures. The individuals employed by the Respondent who were primarily responsible for recommending and managing the relationship at issue are no longer employed at any AIG entity. Moreover, the Order makes no finding that any misconduct reflected that the leadership of AIG condoned or chose to ignore the conduct, or otherwise established a "tone at the top" that encouraged or facilitated the misconduct underlying the Order. The Commission did not make any findings of any misconduct by the board of directors, executive management, or other senior officers of AIG. The conduct described in the Order occurred squarely within lines of business that are separate and distinct from the lines of business involved in the preparation of public disclosures and filings with the Commission as an issuer of securities.

Remedial Efforts

A. Termination of Contracts and Review for Similar Relationships

AIG takes seriously its obligations under the securities laws. In addition to AIG terminating the contract referenced in the Order, Respondent promptly undertook a review of its sponsorship agreements to identify any similar relationships that required disclosure and/or modification or termination. Based upon this review, Respondent terminated two other relationships. Respondent also enhanced its Form ADV disclosures to specifically address sponsorship payments, as described below.

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<sup>7</sup> See Division of Corporation Finance, Revised Statement on Well-Known Seasoned Issuer Waivers (Apr. 24, 2014), available at <https://www.sec.gov/divisions/corpfin/guidance/wksi-waivers-interp-031214.htm>.

B. Revised VFA and VALIC Disclosures

Respondent revised its Form ADV to address the disclosure deficiencies at issue in the Order in December 2019. VALIC, the depositor and issuer of the variable annuity products sold by Respondent, further updated applicable annuity prospectus disclosures to reflect the fact of these sponsorship payments and endorsements in its May 2020 annual update. Respondent's and VALIC's revised disclosures now make clear that VALIC or VFA makes sponsorship payments to organizations that provide various services to plan sponsors and these organizations may endorse VALIC's and Respondent's products and services and provide them with marketing opportunities. The revised disclosures further explain that these payments provide an incentive to these organizations to promote VALIC's products and Respondent's advisory products and services.

These disclosure enhancements went beyond correcting the deficiencies identified in the Order. The new disclosures also make clear that Respondent and VALIC maintain relationships with plan sponsors and may sponsor events or seminars for plan participants that similarly provide marketing opportunities for Respondent and VALIC.

C. Enhancements to Controls

Respondent's parent, VALIC, has adopted new controls to enhance its supervision and review of new sponsorship agreements and other relationships. These controls require that the Group Retirement Chief Operating Officer (with responsibility for both VALIC and VFA), in consultation with Legal, reviews and approves any non-standard distribution and consulting relationships before they can be implemented. VALIC is finalizing written policies and procedures to address expectations for handling smaller-dollar sponsorship payments, which will be rolled out in 2020.

D. Other Remedial Efforts

The individuals primarily responsible for managing the relationship addressed by the Order are no longer employed at any AIG entity. In fact, Respondent and its parent entity, VALIC, have made a number of management changes and enhancements to its supervisory system since the conduct at issue, with new leadership determined to prevent the recurrence of similar misconduct. Specifically, VALIC and Respondent more closely aligned leadership and supervision. For example, after VALIC's former Chief Executive Officer retired in 2019, AIG named a new CEO of Group Retirement, who is responsible for VALIC and Respondent's broker-dealer and investment advisory businesses, among other things. Respondent then aligned the reporting structure of VFA to VALIC to ensure that all personnel at Respondent report up through a single reporting line.

AIG made several key hires in the Legal, Compliance, and Risk departments of Respondent and its parent VALIC in order to enhance the strength of these functions going forward.

- AIG hired a new Group Retirement Chief Risk Officer in August 2019 with responsibilities for VALIC and Respondent.
- Since 2019, AIG has added three new attorneys to the Legal function supporting VALIC and other AIG subsidiaries in Group Retirement including Respondent.
- AIG hired a new Chief Compliance Officer for Group Retirement (responsible for both VALIC and Respondent's compliance) in April 2018.
- Respondent split its Chief Compliance Officer role in March 2019 reporting up to this new position into two new positions, one overseeing the broker-dealer and one overseeing the investment adviser.
- AIG hired a new VFA Investment Advisor Chief Compliance Officer in September 2019 and a new VFA Broker-Dealer Chief Compliance Officer in June 2020.
- AIG hired a new insurance company separate account Chief Compliance Officer for VALIC in March 2019.
- In September 2019, AIG hired a new VFA Senior Compliance Officer for Surveillance; AIG also hired two new VFA Compliance Managers in July and August 2019.

Taken together, these hiring and organizational enhancements significantly changed the composition and structure of VALIC and VFA's management and the size, strength, and capabilities of its Legal, Compliance, and Risk functions.

Respondent has also enhanced and improved its compliance program overall in several ways.

- As VFA is a dual registrant, two new separate compliance manuals for the broker-dealer and investment adviser programs, appropriately tailored to the distinct regulatory regimes for each, went effective in January 2020. As part of the enhanced compliance manuals, VFA revised and updated its Code of Ethics effective March 2020.

- Respondent's new Investment Advisor CCO and Senior Compliance Officer provided training sessions to all personnel on the new compliance policies and procedures in December 2019 and January 2020. In addition, detailed training was provided by the Chief Compliance Officer for Group Retirement and the VFA Investment Advisor CCO as part of the National and three separate Regional sales meetings during the first quarter of 2020. All persons are required to certify they have read and will follow the new policies and procedures incorporated in the new manuals.
- In response to recommendations from the independent consultants, Respondent implemented enhanced internal controls testing enhancements beginning in 2019 and through 2020.
- Commencing in the third quarter of 2019 and through 2020, Respondent increased staff in Compliance Surveillance and Supervision to meet the organizational demands of the program including trends and patterns reviews.

#### Prior Relief

AIG previously requested and received a waiver regarding ineligible issuer status in March 2016.<sup>8</sup> The prior waiver was granted following a March 2016 settlement between the Commission and Royal Alliance Associates, Inc., SagePoint Financial, Inc., and FSC Securities Corporation (the "Advisor Group subsidiaries"), all then indirect subsidiaries of AIG, and related to findings that these entities breached fiduciary duties and made inadequate disclosures in connection with mutual fund share class selection practices and fees received pursuant to Rule 12b-1 under the Investment Company Act of 1940 and failed to monitor advisory accounts quarterly for inactivity or "reverse churning."

Importantly, the March 2016 settlement did not include misconduct by the Respondent, which operated within a different business division than the Advisor Group subsidiaries. AIG sold the Advisor Group subsidiaries shortly after the settlement.

#### Impact on Issuer if Request Is Denied

The Division's Revised Statement provides that it will "assess whether the loss of WKSI status would be a disproportionate hardship in light of the nature of the issuer's conduct." The Order will direct VFA to pay a significant penalty, order VFA to cease and desist from violations of the Advisers Act, and require VFA to comply with a number of undertakings and ongoing remediation efforts. Given that the conduct in the Order was limited to a small number of employees in VFA and not other parts of the broader Life & Retirement, General Insurance or AIG holding company operations, we respectfully submit that applying ineligible issuer status to AIG

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<sup>8</sup> *In the Matter of American International Group, Inc.* (Mar. 14, 2016), <https://www.sec.gov/divisions/corpfin/cf-noaction/2016/aig-031416-405.pdf>



(the Respondent's parent company) would have disproportionate consequences on AIG, particularly in light of the remedial efforts described above.

AIG is a leading global insurance holding company that relies on the capital markets to ensure it and its affiliated businesses have sufficient liquidity to meet its obligations to policyholders, customers, creditors and debtholders. AIG's subsidiaries provide a wide range of property casualty insurance, life insurance, retirement solutions, and other financial services to customers in more than 80 countries and jurisdictions. Its diverse offerings include products and services that help businesses and individuals protect their assets, manage risks, and provide for retirement security. Customers of AIG's subsidiaries include millions of clients and policyholders ranging from multi-national Fortune 500 companies to individuals throughout the world.

AIG is a frequent issuer of securities that are registered with the Commission and offered and sold off of its current and past automatically effective Form S-3ASR registration statements ("WKSI Shelf"). AIG has regularly used its WKSI Shelf for efficient access to the capital markets, which is an essential source of timely and effective funding for AIG's global operations, including the Life and Retirement business of which VFA operates. Since 2016, AIG has offered and sold more than \$12.4 billion in securities pursuant to its WKSI Shelf, which registered a variety of securities, including senior, subordinated and junior debt securities, common stock, preferred stock, and depositary shares.

AIG most recently accessed the capital markets using its WKSI Shelf in May 2020 with a \$4.1 billion senior debt offering in the early stages of COVID-19, and, in light of the continued impact of COVID-19, may access capital markets over the near and medium term. Consequently, the ability to utilize its WKSI Shelf and the other benefits of WKSI status, including the flexibility provided by being able to offer new securities not covered by a registration statement and the ability to register an indeterminate amount of securities, is of key import to AIG. AIG being ineligible to use a WKSI Shelf could potentially significantly negatively impact AIG's liquidity and risk management planning.

The impact to AIG if it were to lose the flexibility provided by WKSI status is particularly concerning to AIG given current market conditions and uncertainties, which have significantly altered the landscape for multinational finance and insurance institutions, such as AIG. Because AIG serves as an important source of liquidity for its many highly regulated insurance subsidiaries that are subject to capitalization requirements and ratios, AIG's ability to rapidly access the capital markets when additional capital or liquidity needs arise and when conditions are favorable is critical and can significantly impact its financing costs and ability to drive investor value.

As noted, AIG most recently utilized its WKSI Shelf when it offered and sold \$4.1 billion in senior notes in May 2020 in response to the current market conditions and uncertainties resulting from COVID-19. While the offering that AIG chose to go to market with could have been done using a non-WKSI shelf if there was sufficient capacity remaining on such shelf, as those conditions change over time, the additional flexibility of a WKSI shelf would be important to

AIG's future capital-raising activities, particularly if investor demand were to coalesce around a security not contemplated at the time of the filing of the shelf.

Insurance companies have, and continue to be, innovative in developing capital securities, such as the pre-capitalized trust capital securities (or P-Caps) issued by a number of insurance companies and the contingent liquidity facility AIG created in the name of Stone Street Trust in 2010 - a predecessor to the P-Caps. These securities go beyond traditional debt and equity securities and given they are not yet developed, could not sufficiently be described in a shelf registration statement. Without WKSI status, AIG may not be able to consider these forms of securities if it does not have a method to quickly offer them should a market develop that requires registered securities. Further, if one of AIG's insurance company peers is able to successfully complete an issuance of a new security, there is often a short window for other insurers to try to issue a similar security. In times like this, that window can be only a few days and missing out on that window because AIG would need to file a new registration statement (subject to review and being declared effective), could delay AIG's access to the capital markets at a critical time. This is particularly important right now given that the scope of COVID-related liabilities is to some extent uncertain and subject to litigation, and adverse legal and regulatory decisions could result in negative market or rating agency reaction that could generate an urgent need to raise additional capital promptly.

Relatedly, as an ineligible issuer, AIG would not be able to register an indeterminate amount of securities, as it currently does through the WKSI Shelf. Even if AIG registers more than it reasonably anticipates issuing as a buffer, extreme conditions could arise where AIG would need to issue more than would reasonably be included on a non-WKSI shelf. If the situation were to arise (such as due to changes in market conditions in light of the COVID-19 crisis) where AIG suddenly needed additional liquidity and it was available through the capital markets, it would be very harmful to AIG if it was unable to access such liquidity because of reaching its limit under a non-WKSI shelf.

AIG's WKSI status - and the continued availability of its WKSI Shelf - is an important part of the company's liquidity and risk management planning. AIG manages its liquidity and capital resources to ensure it may satisfy future requirements and meet its obligations to policyholders, customers, creditors and debtholders, including those arising from reasonably foreseeable contingencies or events. AIG must comply with numerous constraints on its minimum capital positions. The primary uses of AIG's liquidity are paid losses, reinsurance payments, benefit claims, surrenders, withdrawals, interest payments, dividends, expenses, investment purchases and collateral requirements associated with its client-facing businesses. AIG's General Insurance companies may require additional funding support to meet capital or liquidity needs, including in the event of large catastrophes. Other potential events that could strain AIG's liquidity include severe equity market declines or other events causing economic or political upheaval, and the responses thereto, which continue to cause ongoing and severe economic and societal disruption accompanied by significant market volatility.

These constraints on liquidity drive the requirements for capital adequacy and are based on regulatory requirements, rating agency and creditor expectations, and business needs, and measured against internally-defined risk tolerances that take those items into account. Actual capital levels are monitored on a regular basis and, using stress testing methodology,<sup>9</sup> AIG evaluates the capital impact of potential macroeconomic, financial and insurance stresses in relation to the relevant capital constraints of both the parent company and its insurance subsidiaries. However, as with any financial services business of the size and scope of AIG and particularly in times of stress, circumstances may cause cash or capital needs to exceed projected liquidity or readily deployable capital resources. These circumstances could include additional collateral calls, deterioration in investment portfolios or reserve strengthening affecting statutory surplus, higher surrenders of annuities and other policies, downgrades in credit ratings, or catastrophic losses that could result in significant additional cash or capital needs and loss of sources of liquidity and capital.

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In light of these considerations, AIG believes subjecting it to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists to determine that AIG should not be considered an ineligible issuer under Rule 405 as a result of the Order that will be entered in this matter. We respectfully request the Commission or the Division of Corporation Finance, pursuant to delegated authority, to make that determination.

Thank you for your attention to this matter. Please let me know if any additional information is required.

Sincerely,



Paul R. Eckert

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<sup>9</sup> As a highly regulated insurance company, AIG and its component businesses undertake a variety of stress tests and liquidity assessments, including an annual Own Risk and Solvency Assessment, which is filed annually with US state insurance regulators, and other jurisdiction-specific requirements both domestically and abroad.