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Via Electronic Mail

August 9, 2004

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, D.C. 20006-1500

RE: Notice To Members 04-45

Dear Ms. Sweeney:

This letter is submitted in response to Notice to Members 04-45 published by the National Association of Securities Dealers (the "NASD") on June 9, 2004, (the "NTM"). The NTM proposes new rules governing the purchase, sale or exchange of deferred variable annuities (the "Proposal"). The Proposal would establish new requirements for additional suitability determinations, a "plain English" risk disclosure document, principal reviews, and supervisory and training procedures.

This letter is respectfully submitted by Massachusetts Mutual Life Insurance Company ("MassMutual") and MML Investors Services, Inc., ("MMLISI"), a wholly-owned broker-dealer subsidiary of MassMutual. MassMutual and MMLISI are members of the MassMutual Financial Group, a global diversified financial services organization. MassMutual is an issuer of deferred variable annuity contracts, and distributes those products though a nationwide network of affiliated and non-affiliated broker-dealers and insurance agencies. Since our businesses involve the manufacture and distribution of deferred variable annuities, MassMutual and MMLISI have significant interests in ensuring that purchasers of deferred variable annuities receive meaningful and informative disclosures about their investment decisions and purchase products that are appropriate for their specific needs.

OVERVIEW OF COMMENTS

We support the NASD's efforts to improve the level of disclosure investors receive when they are considering purchasing deferred variable annuities. We are, however, quite concerned about the proliferation of supplemental disclosure documents as part of the sales process for securities products. We believe the prospectus is the appropriate document for all important disclosures pertaining to variable annuity products. Supplemental point-of-sale disclosure documents tend to undermine the effectiveness of the prospectus as a critical disclosure document for clients.

If, however, a separate, point-of-sale disclosure document is required, we strongly believe that the disclosure should be provided at the product level rather than at the transaction level.

In addition, requiring yet another disclosure form for proposed exchanges (in addition to state replacement forms) will confuse customers. Disclosures regarding the replacement or exchanges of variable annuities should be handled through existing state replacement forms.

1. Supplemental Disclosure Document

The Proposal would require broker-dealers to provide customers with a "plain English" risk disclosure document which highlights the following items of the particular variable annuity transaction: (1) liquidity issues (potential surrender and tax charges); (2) sales charges; (3) fees; (4) federal tax treatment; (5) any state or local premium taxes; (6) market risk; (7) the existence of a free look period and (8) the fact that all applications are subject to principal review. This document would be provided in addition to the prospectus and would supplement any discussion of these topics contained in the prospectus.

This aspect of the Proposal exacerbates a very disturbing trend by the Securities and Exchange Commission ("SEC") and the NASD to direct prospective investors' attention away from the prospectus. For example, both the NASD and the SEC have recently proposed rules which would require that supplemental, point-of-sale disclosure documents be given to clients summarizing revenue sharing, differential compensation arrangements and other compensation matters. As a result, purchasers of variable annuities are being unwisely distracted from important information contained in the prospectus such as the investment objectives of, risks associated with and performance history of the variable annuity and the qualifications of the individuals managing the variable annuity.

The cornerstone of the federal regulatory plan for the offering of securities products has, for the past 70 years, been reliance on a formal prospectus to provide all required disclosures to investors. By mandating disclosures outside of the prospectus at the point-of-sale for topics such as liquidity issues, sales charges, fees, federal tax treatment, the availability of any state or local premium taxes, market risk, and the existence of a free look period, it appears that the NASD is essentially stating that the prospectus is an insufficient venue to provide these types of disclosures. It would be neither unreasonable nor surprising if, faced with this avalanche of extra-prospectus disclosure documents, investors began ignoring the prospectus completely. Adoption of the proposed risk disclosure document would exacerbate this trend, and continue the undermining of the long-standing and carefully-structured prospectus disclosure system.

If the NASD believes that the current disclosure requirements of the Form N-4 are inadequate, we recommend that the NASD work with the SEC to amend Form N-4. Form N-4 could be amended in such a way as to provide that the NASD's desired disclosures be placed and appropriately highlighted in the front of the prospectus. Incorporating the disclosures into a prominent position in the prospectus would not only convey the importance of such disclosures but also reinforce the status of the prospectus as the critical disclosure document for these products.

Although we do not believe that a separate disclosure document is either necessary or prudent, should the NASD nonetheless choose to adopt this approach, the NTM is not clear as to the level of detail that must be included in the disclosure document. The language of the NTM suggests that this document must be tailored to each transaction. For example, if a premium tax exists in one state but not another, the disclosure document arguably must be tailored to reflect the precise premium tax charge for sales in that state. It is uncertain that a generalized disclosure of all states with premium taxes (and the specific rates of tax for each state) would satisfy the Proposal's requirement that the disclosure form describe the taxation aspect of this "particular variable annuity transaction."

Preparing such a customized document would be extremely time consuming and costly. It would virtually preclude issuing insurance companies from preparing disclosure documents that can be utilized by their entire distribution networks, and would require each salesperson to prepare a separate document for each sale. The resulting proliferation of thousands of individualized disclosure forms for the same product would certainly generate confusion and inconsistencies. Therefore, the disclosure document should be customized at the product level rather than at the transaction level. This would enable insurance company issuers to ensure the consistency and accuracy of all required disclosures.

2. Replacement Disclosure Forms

The Proposal would also require that when a transaction involves a replacement or exchange, the customer be provided with a separate document including the following information: (1) a summary of the significant differences between the existing and proposed variable annuities' contractual provisions, guarantees, death benefits, withdrawal provisions and/or tax treatment; (2) surrender charges, including both those that may be assessed on the surrender of the existing contract and those applicable to the proposed contract; (3) costs that are associated with purchasing a new contract; and (4) the possibility, if any, of modifying or adjusting the existing contract to meet the customer's objectives rather than exchanging or replacing the contract.

The Proposal would, in some situations, allow broker-dealers to use state insurance replacement forms to meet the above requirements. While all states require the use of a replacement form, the only form that currently complies in all material respects with the NASD's proposed requirements is the replacement form required by the state of New York. Therefore, in all states but New York, firms would be required to prepare and complete both a state replacement form and an NASD mandated replacement form.

The utilization of multiple replacement disclosure forms will cause the forms to lose their value. The state insurance departments have historically regulated the issue of replacements. Rules surrounding replacements have been in effect at the state level for many years and have been enforced via market conduct examinations. We believe that the NASD's proposed replacement form is somewhat redundant and that the appropriate means for disclosures regarding variable annuity replacements or exchanges is the state insurance department replacement forms currently in place.

Should the NASD nonetheless require completion of a separate disclosure document regarding replacements, consideration must be given to those situations where some of the information required to complete the comparison is unobtainable or is obtained only through the customer. The Proposal currently provides registered representatives with no alternative procedure or recourse if they cannot obtain the information from the other carrier or client or if the information obtained from the other carrier or client is inaccurate. In other words, we believe that there must be a good faith exception to insulate the representative and his/her broker-dealer from liability in the event that they relied on incorrect or incomplete information provided by a client or carrier. For example, New York Regulation 60 allows firms to use good faith approximations based on the information available in the event the insurer whose coverage is being replaced fails to provide the information. We recommend adopting a similar approach here.

Additionally, unless the NASD develops a standard replacement form (like the New York Insurance Department did under Regulation 60) for use by all registered representatives, the level of disclosure contained in the replacement form will vary depending upon the registered representative creating the form.

Regarding your request for comment on page 6 of the NTM, we would not be in favor of limiting sales of deferred variable annuities to certain classes of investors nor would we be in favor of expanding this proposed rule to include immediate annuities.

We also agree with and incorporate by reference into this letter the comments regarding this Proposal by the National Association for Variable Annuities (NAVA).

SUMMARY

We support the overall message of the NTM but believe that some revisions are necessary in order to ensure meaningful disclosure to the customer. We would be pleased to discuss our views with representatives from the NASD at its convenience.

Sincerely,

/s/ Jennifer B. Sheehan

Jennifer B. Sheehan
Assistant Vice President & Counsel
Massachusetts Mutual Life Insurance Company