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August 9, 2004

Barbara Z. Sweeney  
NASD  
Office of the Corporate Secretary  
1735 K Street, N.W.  
Washington, DC 20006-1500

Re: Notice to Members  
04-45 Proposed Rule Governing the Purchase, Sale, or Exchange of Deferred  
Variable Annuities

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Dear Ms. Sweeney:

I act as in-house counsel to McDonald Investments Inc.

This letter is sent in response to your request for comments on Notice to Members 04-45 entitled "Proposed Rule Governing the Purchase, Sale, or Exchange of Deferred Variable Annuities". McDonald Investments Inc. is a regional broker-dealer and a member of both the NASD and NYSE. As part of its normally brokerage service, McDonald provides its clients with the opportunity to invest in a wide range of investment products including variable annuity contracts. McDonald believes that much of the subject Notice (and the "Joint SEC/NASD Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products") provides the industry with excellent guidance on its sales practices obligations. However, we do have some concerns that we would like to share with the NASD as it finalizes the Proposed Rule here.

1. Initially we understand that the Securities Industry Association is submitting a comment on the proposal. We support the SIA's comments.
2. The Proposed Rule requires that variable annuity purchases be reviewed and approved by a principal at the firm within one (1) business day of the execution of the application by the prospective investor. This timing requirement would be difficult for some of our regional offices to comply with, given that the representative may not be in his office when the application is signed and may not be able to get the application to a principal for a time after the signature is obtained. Given that the prospective investor will be advised that no moneys will be invested until a principal at the firm approves the application and given that these are long-term investments, the need for such a short approval time is not obvious to us. As an alternative, we think the Proposed Rule should be amended to require principal approval as soon as administratively possible.
3. The Proposed Rule requires delivery of the prospectus as well as a separately prepared plain English disclosure document. We presume that the NASD intends

that this disclosure the annuity issuer will prepare document, and that our firm will be required to review and approve it for use, then deliver it at time of purchase to the prospective investor.

4. The Proposed Rule stresses that deferred variable annuities are long-term investments and that those who have liquidity needs should only purchase deferred annuities if their liquidity needs are otherwise covered. We perceive that there is still in the industry a confusion that looks on the money market separate accounts as being liquid and that does not have a clear understanding of long-term investment parameters as they relate to the purchase of these items. We would suggest having definitions of the terms “long term investment objective” and “liquidity”. We would suggest that the definition of long-term investment objective be to hold the investment for a significant period of time. We would suggest that the definition of liquidity emphasize that annuities either being or already purchased do not count as liquid investments but that the term means cash, bank accounts, certificates of deposit, treasury bills and other assets due within 90 days and not subject to market risk.
5. The Proposed Rule without stating it seems to imply that deferred annuities cannot be suitable for IRAs or other retirement accounts. Frequently, these assets are sold in tax-deferred accounts because they provide insurance protection in the event of untimely death while providing a simple vehicle for accessing professional asset management through the separate accounts. We think there is a need to clarify that where reasons supporting the use of a deferred annuity in a tax qualified account that there is no presumption that the annuity should not be purchased, but rather that the purchase may be made with supportable documentation of the insurance coverage desired.
6. The Proposed Rule appears to require that all purchases of deferred annuities be through executed application. This would appear to prevent purchase through more automated means if and once they become available. We would suggest consideration be given to allowing for delivery after issuance, possibly with a mandatory seven (7) day right to rescind after the disclosure is made.

Thank you for your consideration of our views in this matter.

Sincerely yours,

Paul A. Weick  
Vice President & Senior Counsel  
KeyBank National Association

cc: Sandra Mauney, First Vice President  
Manager, Retail Compliance