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Ms. Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD  
1735 K Street, N.W.  
Washington, D.C. 2006-1506

SUBJECT: Comments on NASD Notice to Members 06-31—Pandemic  
Regulatory Relief

Dear Ms. Sweeney:

On behalf of our member companies, the American Council of Life Insurers submits comments on NASD Notice to Members 06-31 concerning regulatory relief that should be granted in response to a possible pandemic or other major business disruption. ACLI is the primary trade association for life insurers in the United States. It represents three hundred seventy-seven (377) member companies that offer life insurance, annuity, pension, reinsurance, and other retirement and financial security products. ACLI member companies account for 91 percent of total life assets, 90 percent of the life insurance premiums, and 95 percent of annuity considerations in the United States. Many of our member companies sell products through broker-dealers subject to regulation by NASD.

The products offered by life insurers provide a foundation of financial security for families against future uncertainties. Life insurers are keenly aware of the vital role their products play in their customers' financial security. Even though a persistent and widespread human outbreak of pandemic influenza remains a possibility and not a fact, life insurers are following developments closely to assure they can continue to serve policyholders and their beneficiaries in the event an outbreak occurs. As they have in the past, life insurers plan to respond promptly in fulfilling their promises.

To ensure that life insurers honor their contractual obligations to policyholders and their beneficiaries, state law requires each life insurer to maintain reserves (*i.e.*, invested assets) that, together with future premium payments, are sufficient to cover expected future claims. The required level of reserves is calculated on a conservative actuarial basis, using state-mandated mortality and interest assumptions, which makes the reserves sufficient to cover some adverse deviations in future claims. In addition, life insurers are required to have additional capital and surplus, over and above reserves, that are available to cover even catastrophic levels of claims. It is unusual for an insurer's reserves to be inadequate and for the insurer to have to dip into capital and surplus to cover claims of its policyholders and beneficiaries. At the end of 2005, the reserves of U.S. life insurers totaled \$ 3.3 trillion, their assets totaled \$4 trillion, and their capital and surplus totaled \$256 billion.

Like all industries, the life insurance industry took extraordinary steps prior to Y2K to ensure continuity of their businesses functions. Insurers took additional steps after September 11, 2001, to further protect their operations in the aftermath of a major catastrophe. Life insurers, working with their state insurance departments and the National Association of Insurance Commissioners, continue efforts to institute operational assessments, establish business continuity plans, and coordinate with federal, state, and local governments to ensure customer needs will continue to be met if there is a pandemic influenza. In this regard, a 2005 report of the U.S. Government Accountability Office, exploring the life insurance industry's ability to recover critical operations after a terrorist attack or natural disaster, concluded that life insurers generally have taken sufficient steps to ensure business continuity and to minimize effects on their service to policyholders.

Nevertheless, the life insurance industry, as with other industries, has on occasion requested additional flexibility from federal and state regulators in order to address marketplace developments following major business disruptions. One important lesson learned from prior terrorist attacks and natural disasters has been the importance of rapid reaction by federal, state, and local governments and coordination by businesses with these agencies. Life insurers have found coordination with state insurance departments and local health departments to be invaluable in refining claims and settlement procedures to their most essential elements and in targeting geographical areas in need of assistance. In the wake of Hurricanes Katrina and Rita, insurance departments in the Gulf States and in many other affected states mitigated certain regulatory requirements to facilitate rapid processing and payment of claims. These efforts were also replicated on a national level by NASD and by federal agencies such as the Departments of the Treasury, Homeland Security, and Labor, as well as the Securities and Exchange Commission, with respect to time-sensitive aspects of securities and pension regulations.

With respect to a future pandemic or other business disruption, the areas of regulation most likely to require flexibility will depend on the nature, scope, and duration of the specific business disruption and, as a result, cannot be completely known in advance. However, prior experience indicates that certain emergency measures will be needed from federal securities regulators to enhance the ability of insurers to service their customers and be consistent with investor protection and market integrity:

- Guidance on the pricing and redeemability of variable life insurance and annuity contracts during emergency or unusual situations when market quotations are not readily available as well as guidance on the impact of delays in getting unit values for disbursements requiring "same day" pricing
- Flexibility in meeting regulatory timing requirements for completing various transactions (*e.g.*, disbursements), particularly in the event of expected staff shortages
- Licensing requirements for emergency call center staff who may not be NASD-licensed and yet may be needed to assist customers on certain product-related matters (This staff would *not* be allowed to provide investment advice or securities recommendations.)
- Exemptions to allow liquidity loans between employee benefit plans and interested parties

- Procedures facilitating orderly stock market re-openings following business disruptions, such as approval of life insurer's registered separate accounts funding variable life insurance and annuity contracts participating in liquidity loans with affiliated entities
- Simplified requirements for in-person meetings of boards of mutual funds and separate accounts
- Flexibility and/or clarification as to oversight rules on the roles/responsibilities of Registered Principals and Representatives during emergency situations

These measures represent the guidance and flexibility that may be needed by life insurers to ensure their continued operation without interruption in the event of a pandemic. Consideration should also be given to processes to expedite the review of applications from firms needing to merge or acquire branch offices, to relocate offices out of damaged areas, and to accommodate rapid changes in or access to customer documentation and communications.

Finally, we would urge NASD to develop, and to be explicit about, methods to communicate and coordinate with the life insurance industry after an influenza pandemic has been detected. We are encouraged by the proactive considerations reflected in Notice to Members 06-31, and we strongly believe that NASD's ongoing commitment to communication with the industry and to regulatory flexibility regarding unforeseen consequences with appropriate relief (beyond the relief that has been planned in advance) will be essential.

Life insurers, working with government agencies and other financial services industries, have typically found innovative solutions to service their policyholders and their beneficiaries when faced with disasters of unexpected magnitude. We are encouraged by the pro-active efforts of NASD, SEC, the New York Stock Exchange, and the Department of the Treasury, as well as the NAIC and state insurance departments, to consider the types of regulatory flexibility that may be needed. While many business disruptions may not be predicted with any certainty, we have learned that it is important to plan ahead together. This is a responsibility that the life insurance industry takes seriously. We look forward to continuing our efforts and working with NASD to prevent and minimize any adverse consequences from a pandemic or other business disruption.

Sincerely,

A handwritten signature in black ink that reads "Lisa Tate". The signature is written in a cursive, flowing style.

Lisa Tate

cc: Eric Moss  
Vice President & Director  
of Emerging Issues  
NASD