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Deputy Director, General Counsel & Secretary



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**INSURANCE MARKETPLACE
STANDARDS ASSOCIATION**

August 9, 2004

*Committed to honesty,
integrity and ethics*

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

Mr. Thomas M. Selman
Senior Vice President
Investment Companies/Corporate Financing
Regulatory Policy and Oversight (RPO)
NASD
9509 Key West Avenue
Rockville, MD 20850

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

Dear Ms. Sweeney and Mr. Selman:

The following comments on the NASD's proposed rule governing the purchase, sale, or exchange of deferred variable annuities (the "Proposed Rule") are submitted on behalf of the Insurance Marketplace Standards Association ("IMSA"), a national non-profit association whose mission is to promote high ethical standards of conduct in the life insurance marketplace. IMSA member companies represent 55% overall market share for individually-sold life insurance, annuity and long-term care insurance products in the United States.

Life insurance companies that have qualified for IMSA membership make an affirmative commitment to promote sound marketplace practices through compliance with IMSA standards. To attain IMSA qualification, an insurer must demonstrate compliance with IMSA standards through a self-assessment of their applicable policies and procedures which is reviewed thereafter by an independent third party. Compliance with IMSA standards serves as the benchmark of excellence in the life insurance industry and provides an additional set of safeguards to protect consumer interests.

IMSA standards are based upon IMSA's Principles and Code of Ethical Market Conduct within IMSA's Assessment Handbook which can be found on IMSA's web site located at

www.imsaethics.org. In fact, several IMSA standards address many of the issues identified in the Proposed Rule.

The NASD has expressed concern regarding the suitability of deferred variable annuity transactions. IMSA qualified companies commit to abide by IMSA’s “needs-based selling” standard that notes that the insurable needs or financial objectives of customers are determined based upon relevant information obtained from the customer and the company enters into transactions which assist the customer in meeting his or her insurable needs or financial objectives.¹ IMSA’s “needs-based selling” standard used in conjunction with the NASD’s suitability requirement under NASD Rule 2310 establish a comprehensive framework to determine whether a particular deferred variable annuity contract will assist a consumer in meeting his/her financial objectives. With this in mind, it appears that establishing a separate set of suitability requirements specifically related to deferred variable annuity sales in addition to insurers’ present compliance with IMSA’s “needs-based selling” standard and the NASD’s suitability rule may create additional regulatory burdens for insurers related exclusively to deferred variable annuity sales that are not imposed upon other financial products (e.g., mutual funds, unit investment trusts, etc.).

IMSA standards also require insurers to provide advertising and sales materials which are clear as to purpose and honest and fair as to content.² Moreover, these applicable standards suggest that materials that are presented as part of a sale are comprehensible in light of the complexity of the product sold.³ In addition, IMSA qualified companies are required to provide appropriate disclosures of costs, values and benefits in an accurate, fair and complete manner.⁴ These requirements under IMSA standards address the disclosure issues contemplated by the Proposed Rule. Compliance with IMSA’s product disclosure requirements in addition to providing a copy of the product prospectus to a consumer will meet the informational disclosure objectives of the Proposed Rule.

With respect to replacement activity associated with deferred variable annuities, IMSA standards require insurers to establish policies and procedures to provide information to customers to allow them to determine whether a replacement is appropriate.⁵ In addition to demonstrating compliance with applicable IMSA standards, IMSA qualified insurers must also demonstrate compliance with applicable state insurance replacement laws. These dual requirements pertaining to replacement activity create an appropriate framework to protect

¹ Principle One, Code A, Principles and Code of Ethical Market Conduct, IMSA Assessment Handbook (April 2000 edition), p. 51.

² Principle Four, Principles and Code of Ethical Market Conduct, IMSA Assessment Handbook (April 2000 edition), p. 75.

³ Principle Four, Code B, Principles and Code of Ethical Market Conduct, IMSA Assessment Handbook (April 2000 edition), p. 77.

⁴ Principle Four, Code D, Principles and Code of Ethical Market Conduct, IMSA Assessment Handbook (April 2000 edition), p. 80.

⁵ Principle Three, Code B, Principles and Code of Ethical Market Conduct, IMSA Assessment Handbook (April 2000 edition), p. 71.

consumer interests without subjecting deferred variable annuity transactions to an additional layer of regulatory scrutiny as contemplated by the Proposed Rule.

IMSA standards also require IMSA-qualified life insurers to adequately train the distributors of their applicable products.⁶ To comply with these standards, an IMSA qualified life insurance company would have to be able to demonstrate policies and procedures designed to provide appropriate information to adequately train the distributors of their applicable products. This training must include information concerning company product features including the benefits, limitations, costs, values, charges and operations of applicable products including deferred variable annuities, as appropriate.

Finally, IMSA standards require IMSA qualified life insurers to maintain a system of supervision and review that is designed to achieve compliance with IMSA standards.⁷ To the extent the supervision and monitoring policies and procedures uncover instances of inappropriate sales activity, the insurer is required to ferret out the root cause of these problematic sales practices to determine whether the specific instance identified is isolated or systemic.

In sum, we believe that many of the consumer safeguards that are contemplated by the Proposed Rule are already in practice at IMSA qualified life insurance companies. We thought you might find this information to be of assistance as you consider possible adoption of the Proposed Rule.

IMSA remains committed to working closely with the NASD and other regulatory agencies to examine ways to avoid problematic sales practices. Such practices are inconsistent with IMSA's mission to promote high ethical standards in the life insurance marketplace. As in the past, IMSA offers its willingness to serve as a conduit to communicate consumer education information that is published periodically by the NASD to IMSA qualified life insurance companies. IMSA also welcomes the opportunity to assist any NASD effort to develop elements of a training curriculum to promote greater regulatory and consumer understanding of deferred variable annuity and other applicable life insurance product sales.

Please do not hesitate to contact me via e-mail at DonaldWalters@IMSAethics.org or via phone at (240) 497-2905 if you should have any questions.

Very truly yours,



Donald J. Walters

⁶ Principle Two, Code C, Principles and Code of Ethical Market Conduct, IMSA Assessment Handbook (April 2000 edition), p. 62.

⁷ Principle Six, Principles and Code of Ethical Market Conduct, IMSA Assessment Handbook (April 2000 edition), p. 90.