



Member of the AEGON Group

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September 29, 2008

Via E-mail

Marcia E. Asquith
Office of Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

RE: Regulatory Notice 08-39- Variable Insurance Products: FINRA Request Comments on Proposed New Rules Governing Communications about Variable Insurance Products

Dear Ms. Asquith:

Transamerica Capital, Inc. appreciates the opportunity to submit comments regarding the proposed changes to the rules applicable to communications about variable insurance products. Transamerica Capital, Inc. ("TCI") is a broker/dealer engaged solely in the business of underwriting and wholesaling of variable annuities, variable life insurance and investment company securities. TCI would like to offer the following comments regarding the proposed new rules.

Apart from the specific comments below, we note overall that certain sections and subsections are directed to either variable annuities or variable life products, while others appear to be intended to apply to both products. Due to the vast differences in these products as well as differences in the structure and scope of illustrating them, we would like to see clearer distinctions as to the applicability of each section to each product type. Without some clarification, we are concerned that there will continue to be different interpretations by member firms and/or FINRA examiners. We strongly encourage you to draft separate rules for variable annuities and variable life products.

Additionally, we would like FINRA to provide guidance on illustrations that depict a product's fixed account. We acknowledge there are valid reasons for both variable annuity and variable life products to illustrate their fixed account due to product innovations, for example, and we are concerned that FINRA's silence on this issue will continue to foster an uneven competitive playing field.

Proposed IM-2210-2 (d)

This section would require that the discussion of guarantees or riders include, "the circumstances under which the guarantee or rider will not benefit the customer". We note that the Notice states

that it is not FINRA's intention to "require exhaustive disclosure of every circumstance in which a rider would not benefit a customer..." Unfortunately, that is exactly what we feel will happen as this section does not provide adequate guidance on what information such a discussion should include or what may be omitted.

The lack of guidance provided by this rule would leave it up to the member firms and individual examiners of the FINRA staff to interpret what constitutes a sufficient disclosure. This could result in an uneven application of the rule resulting in an uneven playing field among member firms.

Most marketing material is written for a broad spectrum of customers. It could be very burdensome for member firms to identify how a broad range of clients might not benefit from a given feature. This would most likely result in a significant volume of disclosures in the marketing material, as firms sought to avoid the risk of omitting any possible disadvantage. The material would likely be dense and confusing to the customer instead of educational.

Currently Rule 2210 (d)(1)(A) requires material to be fair and balanced providing a sound basis for evaluating the products. We feel that this standard continues to be sufficient for the discussion of guarantees and riders. In order to be balanced, limitations must be clearly explained. It is then up to the customer and his/her registered representative to determine how those limitations will impact the customer's personal situation.

Proposed IM-2210-2 (f)(2)

Section (f)(2)(C) states that personalized sales illustrations must reflect the deduction of all applicable fees and charges. We seek clarification of what is meant by the term "applicable" in this context to avoid unequal application of the rule, as noted above. We request that the proposed rule be revised to name the fees or categories of fees that should be deducted from personalized variable life illustrations.

Section (f)(2)(D) would require that the presentation of investment option performance be consistent with the standards for open-end management investment company performance as stated in SEC Rule 482. TCI seeks clarification as to which sections of Rule 482 FINRA it is referring to here. As drafted, this section could be read to require that such performance must comply with all sections of Rule 482. However, certain portions of the Rule do not apply to variable life performance. We believe this section of the proposed rule should be revised to identify which parts of Rule 482 firms are expected to comply with to avoid an overly broad interpretation that extends beyond the requirements of the Rule and which would be burdensome to implement.

Proposed IM-2210-2 (f)(3) and IM-2210-2 (f)(5)

These sections would require variable annuity performance to be "net of maximum guaranteed charges" unless accompanied by performance that is net of such fees. We contend that historical performance is intended to represent the actual performance of the investment options based on current charges. By using the maximum fees, customers would not get an accurate depiction of historical performance.

In addition, it is not clear which charges would be included under your definition of "guaranteed charges". Endnote 11 excludes fees for optional riders but does not address optional features

which may be available under the base contract and not a rider. For example, a variable annuity contract could offer multiple death benefit options: each with a different fee. It is difficult to determine which fee would be considered the “guaranteed” charge. It is possible there will be differing interpretations by member firms and/or individual FINRA staff members unless further clarification is given as to the definition of this phrase.

These sections should be revised to require the deduction of current charges, not maximum charges and to provide more guidance on what is meant by “guaranteed charges.”

Proposed IM-2210 (f)(5)(B)

The proposal would require that historical illustrations present year-by-year account values in a tabular or bar-chart format. TCI has concerns about this requirement. First, it appears that the use of mountain or line charts to present this type of information would not be allowed. We think that restriction is unnecessary. Because of the long-term nature of a variable annuity, illustrations could span a number of decades resulting in a very long and confusing illustration.

We note that this requirement is not limited to personalized illustrations, so we interpret this requirement to apply to illustrations designed to explain how a product feature or rider works. Generally such illustrations call out values that are necessary or helpful for the understanding of the feature by the customer. To muddy the presentation with interim account values that are not germane to the understanding of the feature would result in confusing and overly complicated marketing material. The purpose of such illustrations is to help the customer understand how the feature or rider works. As long as the information is presented in a fair and balanced manner as required by NASD Rule 2210 (d)(1)(A), year-by-year account values would not enhance the customer’s understanding of such illustrations.

We propose that this requirement be limited to personalized illustrations and not to all illustrations. In addition, we request that the section be revised to require year-by-year values for a certain period of time, for example, the first 20 years and then periodically thereafter. We feel this will give customers enough information to make an informed decision without overwhelming them.

Proposed IM-2210-2 (g)(1)

This section would again require the deduction of maximum fees and charges. As we expressed in our prior comment on similar language as it pertains to historical performance, we feel that assumed rate performance should reflect the current fees and charges instead of maximum fees and charges. This would give customers a more accurate representation of how their contract values and/or rider values might be affected by various rates of return.

Proposed IM-2210-2 (g)(3)

We agree with the proposal to allow negative rates of return for assumed rate illustrations. The requirement to accompany such illustrations with one based on a positive rate of return is also acceptable. We do not, however, agree with the requirement that the illustration also be accompanied by a 0% illustration. We feel the negative return serves the purpose of the 0% return in that it presents how a benefit would be affected in a down market. We acknowledge the concern that certain features, such as living benefit riders, show a benefit best in a down market. In this case, the positive returns would provide the same balanced presentation as the 0%

illustration provides in an up market illustration. We request that FINRA considers removing the 0% requirement when a negative illustration is also included.

Proposed IM-2210-2 (g)(4)

We believe the ability to use broad-based securities index performance is a positive change. We do, however, request clarification. Variable insurance products generally have multiple investment options, each potentially having different benchmark indexes. How would a firm determine the appropriate indices to depict? If illustrating a single investment option that has more than one benchmark index, for example a blended fund that has both a bond and an equity benchmark, is it permissible to use blended performance of more than one benchmark index? What time period should be used?

Proposed IM-2210-2 (g)(5) and (g)(6)

This section again requires year-by-year account values. We have the same concerns here as expressed in the discussion of section (f)(5)(B) above.

In addition we request clarification on what fees should be deducted from the gross rate to determine a net rate. Without clarification, we are concerned that there will continue to be different interpretations by member firms and/or FINRA examiners. When comparing products, a customer should be able to compare products using illustrations with the same fee assumptions.

Proposed IM-2210-2 (g)(7)

The proposal would require that illustrations reflect either an arithmetic average of expenses of all investment options or a weighted average of expenses. TCI seeks confirmation that it will no longer be a requirement that presentations using a weighted average also be accompanied by one using an arithmetic average.

Proposed IM-2210-2 (g)(8)

This section would require a statement that the purpose of the illustration is to show how performance could affect policy cash value and death benefit. The proposal as currently written is too narrow as it does not take into account illustrations designed to show how other features or optional riders are affected. For example, the purpose of an illustration could be to explain a living benefits rider and not depict death benefit values at all. We request that that requirement be removed or revised to address the wide range of possible illustrations.

Thank you for taking the time to consider TCI's comments.

Sincerely,



Courtney John
Chief Compliance Officer
Transamerica Capital, Inc.
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