

August 9, 2004

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

RE: Request for Comment on Proposed Rule Governing the Purchase, Sale, or Exchange of Deferred Variable Annuities (NASD Notice To Members 04-45)

Dear Ms. Sweeney:

American Express Financial Advisors (“AEFA”), a subsidiary of American Express Company, respectfully submits this comment letter on the NASD proposal governing the purchase, sale, or exchange of deferred variable annuities. The proposed rule would impose sales practice standards tailored specifically to transactions in deferred variable annuities in the areas of suitability, disclosure, principal review, supervision and training. We support regulatory efforts to enhance supervision and training and to improve consumer disclosure surrounding the sale of deferred variable annuities. However, we believe the proposed rule imposes duplicative requirements regarding the sale of one product. We recommend the NASD reconsider its proposal in its efforts to move toward enhanced consumer protection.

AEFA takes the need to make only suitable and appropriate sales seriously. Absent greater coordination and elimination of redundancy between the various initiatives, proposed and current, we believe the proposed rule would have a significant negative impact on both the securities and insurance industries, and is likely to overwhelm consumers by providing multiple disclosure documents of various lengths, which could potentially lead to less, rather than more, understanding of the product.

We have actively participated in industry analysis of the proposal and drafting committees, in particular those of the American Council of Life Insurers, the Securities Industry Association, and the National Association for Variable Annuities. We echo their concerns surrounding the rule and respectfully request you consider the issues outlined in their comment letters.

In addition, we appreciate the opportunity to highlight our concerns regarding certain requirements in the rule – risk disclosures and the time permitted for the review process by a designated registered principal.

Risk Disclosure

We recommend consumer disclosure be more streamlined than contemplated by the proposal in its current form. We believe a more effective approach could involve working with the Securities and Exchange Commission to amend the forms governing prospectus disclosure by incorporating and moving items of particular concern and importance to the beginning of the prospectus and drafting those sections in “plain English.” This alternative would meet the NASD’s goal of a product specific disclosure without the burden of a separate document. It would also help to ensure that consumers receive important information, foster uniformity, and increase the likelihood that consumers read, understand and act upon the disclosures.

Consumers could be easily overwhelmed by paper when considering not only the proposal, but also recent rulemaking by the NASD and SEC regarding compensation arrangements and point of sale disclosures and existing regulatory requirements. Many of these disclosures are redundant. Requiring a transaction based, stand-alone disclosure statement in addition to the prospectus could have the adverse result of reliance on that document rather than on the information in the prospectus. We believe the prospectus should continue to be the primary source for important disclosures to the consumer.

Principal Review Process

Designated registered principals are required to review and approve all securities transactions under NASD Rule 3010(d). We are concerned that the rule as proposed would subject sales involving deferred variable annuities to a special review process. Securities firms currently apply NASD Rule 3010(d) to deferred variable annuities and we recommend the continuation of this process instead of establishing a separate review process and time frame for sales involving variable annuities.

To require otherwise could place manufacturers of deferred variable annuities at a competitive disadvantage with other products in the financial services industry and it could limit consumer choice when considering appropriate products available to meet their overall financial situation, needs and objectives. In addition, we believe the time required under the proposed rule to conduct the review and approval process does not recognize the steps involved in that process, the time necessary for a thoughtful review by the registered principal, or the logistics involved in a one business-day turnaround by firms with remote locations. Current NASD Rule 3010(d) correctly accounts for and accommodates broker-dealer firm size, varying distribution channels, business and

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customers. Conversely, the proposal in its current form would not provide the flexibility under NASD Rule 3010(d) that is necessary in today's marketplace.

Regarding the effective date, we respectfully request sufficient time be granted to implement the rule, 12 months or more if possible, in light of the many and varied regulatory changes we are in the process of implementing over the next several months.

We appreciate the opportunity to comment and your consideration of our concerns.

Sincerely,

Beth E. Weimer
Chief Compliance Officer