

August 9, 2004

Mrs. Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, D.C. 20006-1500
pubcom@nasd.com

RE: NASD Notice to Members 04-45 Relating to Deferred Variable Annuity Sales Practices

Dear Ms. Sweeney:

I am writing on behalf of A.G. Edwards & Sons, Inc. (“A.G. Edwards”) to comment on the rule proposal referenced above (the “Proposal”) regarding deferred variable annuity sales practices. A.G. Edwards supports NASD efforts to ensure that variable annuity transactions are both suitable and adequately supervised. However, we would like to comment on certain aspects of the proposal that we find problematic.

We agree with the views set out in the comment letter submitted to you by the Securities Industry Association (“SIA”) and we wish to expand on selected issues discussed in that letter. Specifically, A.G. Edwards shares the SIA’s concerns regarding the separate plain English disclosure, fixed suitability standards, required disclosure of federal and state tax information and the requirement for principal review within 24 hours of execution of the transaction.

While we agree that it is essential to fully disclose to the investor all product features and risks associated with a specific annuity, we think that this important information can be delivered more effectively through a revised prospectus and via the issuer’s web site. For the reasons outlined below, we think that the NASD should work with the SEC to revise existing prospectus requirements to require a summary section containing this information and by requiring issuers to place increased disclosure on their public web sites. In addition to the comments presented by the SIA in its letter regarding administrative costs and difficulties, A.G. Edwards would like to stress the importance of maintaining the prospectus as the principle document for providing meaningful disclosure to investors.

The existing regulatory framework already requires that extensive disclosures relating to product features, risks and other important information be provided to investors through the applicable prospectus. By revising this existing document, relevant information could be provided in a more cost-effective and investor friendly manner. For instance, a separate plain-English summary section could be created for each prospectus, highlighting information regarding fees and expenses, available riders, risk factors and

free look provisions. The NASD could require broker-dealers to deliver the prospectus containing this summary section to investors at the point of sale. The full prospectus could also be delivered with the confirmation. Investors who wish to learn more detail regarding the complex operational aspects of these investments can reference the body of the full prospectus or the Statement of Additional Information. This new structure would be similar to the “summary” or “profile” prospectus advocated by the SEC and NASD in the early 1990s, and would obviate the need to develop a new disclosure for delivery at the point of sale. This revised format and delivery requirement would make the document more inviting to the investor and promote its use as the principle vehicle for providing useful information regarding annuities.

Investors would not be well served by having additional documents thrust upon them when purchasing annuities. Should the NASD decide to require the separate disclosure document, investors would be inundated with multiple documents at the time of, or shortly after, purchase. Not only would the investor receive the new disclosure and a confirm for each annuity that he or she purchases, the investor would also receive the offering prospectus, a semi-annual report, an annual report, a proxy, and, normally, at least one updated prospectus in the first year of investment. Moreover, the increase in documentation would come at a cost, which ultimately would be borne by investors in the form of higher fees. We urge the NASD not to adopt the separate plain English disclosure outlined in the Proposal. Rather, we believe that expanded disclosure can be better addressed by revising existing prospectus requirements and through the web-based disclosure alternative presented by the SIA in its comment letter.

Regarding the Proposal’s discussion of suitability, A.G. Edwards opposes the development of bright-line standards for determining whether a transaction is suitable. The six suitability factors referenced in the Proposal offer general guidelines that should be considered in an annuity transaction. However, each investor has unique needs, varying degrees of risk tolerance and different investment goals and objectives. The registered representative who is working one-on-one with the investor is in the best position to determine the unique investment needs of that investor, and must be allowed the freedom to consider all relevant information when recommending an appropriate investment. Hard-and-fast rules for disapproving purchases based on any single factor would unnecessarily limit the registered representative’s ability to recommend a suitable investment, considering the totality of circumstances surrounding the anticipated investment. Consequently, an investor may not be allowed to make an investment that fits his or her unique needs because a single suitability factor, considered in isolation, restricts the registered representative from recommending the product.

While A.G. Edwards supports most of the increased disclosures called for in the Proposal, we do not think that members should be required to provide detailed disclosure regarding federal and state tax treatment of variable annuities. Like many other broker-dealers, A.G. Edwards has deliberately limited the scope of its business conduct to providing investment advice without also acting as a tax advisor to its clients. Because of our business focus, we have not developed the expertise or resources necessary to actively monitor and interpret tax regulation in all of the jurisdictions in which we

conduct business. As a result, we advise our clients to seek the opinion of their own tax advisor if they have any questions regarding the tax implications of purchasing, surrendering or making withdrawals from any annuity contract. We believe that investors would be better served by continuing to receive objective tax advice from a tax professional.

Finally, we want to express our concern for the requirements relating to principal review and approval as described in the Proposal. As a preliminary matter, we request that the NASD provide clarification regarding who would qualify as a “registered principal” for the purposes of the proposed rules. While the use of this term could be interpreted as requiring review by a General Securities Principal (Series 24), we believe that the intent of NASD Rule 3010 is that a General Securities Sales Supervisor (Series 9, 10 or 8) qualifies as a registered principal for the purposes of supervising the sales activities contemplated under this Proposal. We ask that the NASD confirm our understanding in the final rule.

We would also like to address the 24-hour turnaround for supervisory approval required by the Proposal. We are concerned that this timeframe may be too short for conducting effective supervisory efforts. It does not take into account that the complexity of a given situation may necessitate a more thorough analysis of the pending transaction and the need for review of additional supporting documentation. Since funds are not invested until the sale is approved and processed, we think that the risks associated with rushing a supervisor’s review and consideration of the transaction far outweighs the benefits of a 24-hour supervisory turnaround to the investor.

We ask that the NASD work with the SEC to improve prospectus disclosure rather than creating a separate plain English disclosure regime for annuities. Further, we urge the NASD not to adopt fixed standards for suitability, additional tax disclosure requirements or a required 24-hour time period for principal review.

Thank you for the opportunity to comment on this important proposal.

Respectfully Submitted,

Mike Scafati
Senior Vice President
A.G. Edwards & Sons, Inc.