

August 9, 2003

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

RE: NTM 04-45

Dear Ms. Sweeney:

John Hancock Life Insurance Company, on behalf of its member firms Signator Investors, Inc., Essex National Securities, Inc. and Manulife Financial Securities LLC (collectively, the "Hancock Broker-Dealers"), thanks the NASD for this opportunity to respond to the NASD Notice to Members 04-45, Proposed Rule Governing the Purchase, Sale or Exchange of Deferred Variable Annuities. This response addresses concerns based on the unique viewpoint of insurance-affiliated broker-dealers which often serve as both retailers of variable annuities and underwriters of the variable annuity products issued by affiliated insurance entities. The comments below reflect the collective thoughts and concerns of the Hancock Broker-Dealers.

The Hancock Broker-Dealers applaud the efforts of the NASD and other regulators to ensure that sales of variable annuities comply with all applicable requirements, including suitability and full disclosure, and are supported by proper sales supervision, record keeping and training. The Hancock Broker-Dealers take the issue of unsuitable sales practices very seriously.

The Hancock Broker-Dealers recognize that a number of other NASD member firms and industry organizations, including the National Association for Variable Annuities ("NAVA"), of which the insurance affiliates of the Hancock Broker-Dealers are members, have provided thoughtful and cogent comments on the rule proposal. The Hancock Broker-Dealers support many of these positions, in particular those expressed by NAVA, and we will not repeat those arguments here. However, because we feel particularly strongly about certain of the issues presented by the rule proposal, we respectfully submit the following brief comments:

- One business day principal approval: Section (c) of the proposed rule would require a registered principal to review and approve all deferred variable annuity transactions no later than one business day following the date of the execution of the application by the customer. This requirement is particularly burdensome for insurance-affiliated broker-dealers which have numerous branches and detached

locations. We would suggest a time period for principal approval more consistent with existing NASD rules and state insurance law requirements – e.g., that the principal approval take place prior to the effective date of the contract which we would consider to be the date the insurance company issues the contract. We believe that this principal approval process along with the “free look” requirement which is unique to annuities and insurance products, affords the customer additional protection not provided in connection with the purchase of other types of securities products. We would welcome the opportunity to work with the NASD on a model Client Profile form, which could be used in addition to the annuity application for principal approval. We are uncertain, however, if use by an *insurance company* of such a model form would result in the document becoming subject to policy form and approval requirements mandated by state insurance laws and regulations. We would hope that the NASD would work closely with the National Association of Insurance Commissioners (“NAIC”) to reduce the possibility of state mandated variations in a model form, which would have a drastic impact on any NASD goal of uniformity

- Risk disclosure document: The rule proposal is unclear as to the specificity of the information required in the risk disclosure document proposed in Section (b)(1)(B). If the information required – e.g., sales charges, fees and state and federal tax treatment – must be computed and disclosed separately for each individual customer, the proposal would conflict or overlap with the Securities and Exchange Commission’s (“SEC”) proposed new rules and rule amendments requiring broker-dealers to provide customers with information at the point-of-sale and in transaction confirmations regarding the costs and conflicts of interest arising from the distribution of insurance securities, among other investments.<sup>1</sup> If the proposal’s disclosure requirements are intended to provide a brief disclosure of certain main features of the deferred variable annuity that is subject to the sale, these disclosures may be more helpful if integrated into the prospectus, where most are already required by SEC rules to be discussed in detail. At the very least, some clarification by the NASD on the degree of specificity required by this section of the proposed rule would be helpful. In addition, we would also hope that the NASD would work closely with the NAIC to coordinate any potential disclosure documents the NASD may require to reduce the possibility of state mandated variations.
- Suitability review: The requirement that a principal approve twice, in writing, the same deferred annuity transaction where a registered representative has recommended the transaction appears to serve no evident purpose. Some clarification or elaboration by the NASD on this point may help us to understand the need for two approvals by a principal of the same transaction.

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<sup>1</sup> Release Nos. 33-8358 and 34-49148 (January 29, 2004).

- Variable annuities in qualified plans: While NASD Notice To Members (“NTM”) 99-35 enumerated several reasons that the sale of a variable annuity within a qualified plan would not be suitable, it also enumerated situations in which such a sale *would be* suitable. NASD NTM 04-45, by omitting any mention of the latter situations, may be read to imply that all sales of deferred variable annuities within a qualified plan are unsuitable and, therefore, prohibited. While we acknowledge and agree that situations in which the sale of a variable annuity within a qualified plan are limited, and that the suitability of all such sales should be closely scrutinized, we believe that clarification of the NASD’s position on this issue in light of NTM 99-35 would be helpful.

- **Training**

This key provision is also a requirement that we believe is appropriate and practical . It would also be an opportunity for NASD members to further develop their Firm Element Continuing Education Programs. A parallel recommendation would be for the NASD to promote this type of training in the Regulatory Element of the Securities Industry Continuing Education Program as well.

While there are a multitude of additional comments that could be considered, we believe that this comment letter expresses our most pressing concerns. We also hope that these concerns raise the effectiveness of supervision, satisfy public policy and enhance sales practice standards and supervisory requirements that protect the interests of both NASD members and the investing public.

Very sincerely,  
Jude A. Curtis  
Senior Vice President  
& Chief Compliance Officer