

July 22, 2004

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

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

Dear Ms. Sweeney:

ICBA Financial Services Corporation, a member firm and subsidiary of the Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the proposed rule governing the purchase, sale, or exchange of deferred variable annuities. The proposed rule includes suitability, disclosure and prospectus delivery, principal review, supervisory and training requirements tailored specifically to transactions in deferred variable annuities.

SUITABILITY

The proposed rule makes mandatory the suggested guidelines set forth in Notice to Members 99-35. Our firm adopted those guidelines as mandatory under our policies and procedures shortly after publication. We believe that the guidelines are appropriate and should be made mandatory as proposed.

DISCLOSURE AND PROSPECTUS DELIVERY

We agree with the concept of a plain English disclosure document. Many firms, like our own, already employ such disclosures in the purchase, sale or exchange of these products. The issues to be covered as addressed in the proposed rule—liquidity, sales charges, fees, federal tax treatment, state and local premium taxes, and market risk are all appropriate. The question is the degree of specificity relating to a particular contract.

A practical approach would employ the use of a standard plain English disclosure form outlining basic terms of liquidity—surrender charges, annual free withdrawals, and penalties of early withdrawal; sales charges as specified in the prospectus; a summary of fees—including administrative and mortality charges as well as fees for added riders; the positive and negative impact of federal tax treatment; the potential for state and local premium taxes and the additional cost impact, if any to the purchaser; and a description of the market risk in general.

To require specific detailed disclosure of all the issues covered by the proposed rule on each and every different variable annuity contract offered by a member would be unduly burdensome and,

¹ The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to protecting the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace. For more information, visit ICBA's website at www.icba.org.

like recent mutual fund disclosure proposals, would place a substantial expense burden on the industry and would be, for small dealers, cost prohibitive.

As an example, state and local premium taxes are generally communicated to the purchaser by the insurance companies as a part of the disclosures accompanying the policy at delivery. The purchaser has the option to exercise their "free look" right to cancel the policy if they object to the level of such premium taxes. For a small firm to maintain a database of all various state and local premium taxes and to prepare such disclosures in advance would be cost prohibitive if not impossible.

A standard plain English document as described above should be designed to give the customer the summary of the issues addressed while still referring to the prospectus for more detailed information.

PRINCIPAL REVIEW

The proposed rule includes conflicting language as to the role of principal review. The Executive Summary indicates under 'Disclosure and Prospectus Delivery' that the customer should be informed that "all applications are subject to review and approval by a designated principal" while the 'Principal Review' section indicates that a "registered principal would be required to review and approve the suitability analysis document no later than one business day following the date of execution of the deferred variable annuity application".

The first interpretation creates a "subject to" transaction that is practically unworkable and adds customer confusion. Given that variable annuities are often sold by a registered representative who is not also a registered principal, is not accompanied by a registered principal on the sales call, or does not work in an office environment offering immediate access to a registered principal; this requirement is impractical. Treating the opening of a variable annuity account opening in the same manner as an options account opening is inappropriate given the structure of the products involved and the inherent risk to the customer. Further, the customer would likely be even more confused as to when a purchase takes place. Today the customer commits to purchase upon execution of the application and delivery of funds subject to their rights under the various "free look" provisions. Creating a "subject to" purchase would add another confusing step to the customer's decision-making process.

The second interpretation-approval by a registered principal within one business day-is practical and provides the supervisory process necessary to insure suitability.

SUPERVISORY AND TRAINING REQUIREMENTS

Subject to the comments above regarding principal approval, we support the supervisory elements of the rule including the establishment and maintenance of specific written supervisory procedures reasonably designed to achieve and evidence compliance with the standards set forth in the proposed rule.

We support the implementation by members of training policies and programs that address the unique features of deferred variable annuities including liquidity issues, sales charges, fees, tax treatment, and market risks. We recognize the lack of product knowledge in the public and the industry today. The fact that consideration of modeling the proposed rule after certain provisions of the options and futures rules is, in and of itself, reflective of the lack of understanding of the product.

Contrary to much of the media hype, honorable and honest registered representatives and their firms appropriately sell variable annuity products to their customers. Many average American investors are limited in the size of their investment portfolios such that efficient diversification or flexibility between fixed and variable assets is difficult. Variable annuities provide one solution. Features such as tax deferral, guaranteed income benefits, death benefits, and others may be important to an investor. And, the investor is often willing to pay for those benefits. The proposed rule should seek to train member personnel in the unique features of this product, not to categorically prejudice them against it. The issues should be **meaningful and understandable** disclosure of benefits and the related costs and suitability of the product for the customer.

CONCLUSION

We support the proposed rule with the adoption of clarifications and changes as detailed above and summarized as follows:

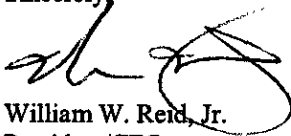
A standard plain English disclosure document should be designed to give the customer the summary of the basic issues regarding liquidity, sales charges, fees, federal tax treatment, the possible existence of state and local premium taxes, and market risks associated with variable annuities. The document should refer the customer to the prospectus for detailed information regarding a specific variable annuity product.

The interpretation of principal review should be clarified to remove any suggestion of a "subject to" transaction and require approval by a registered principal within one business day of the transaction.

Training policies and programs for the unique issues associated with variable annuities should be required of member firms. Training programs should include a balanced presentation of the features and benefits of these investment vehicles as well as the liquidity issues, sales charges, fees, tax treatment, and market risks involved.

Thank you for the opportunity to comment and your consideration of our suggestions.

Sincerely,



William W. Reid, Jr.
President/CEO