By E-mail: Pubcom@nasd.com

August 6, 2004

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K. Street, N.W.
Washington, D.C. 20006-1500

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

Dear Ms. Sweeney:

This comment letter is submitted on behalf of Transamerica Financial Advisors, Inc. (CRD #3600), a full-service broker-dealer with over 1,000 registered representatives selling mutual funds, variable life insurance, variable annuities, and general securities. Transamerica Financial Advisors ("TFA") supports the desire of the NASD and other securities regulators to enable the public to better understand the unique features, benefits, and potential disadvantages of deferred variable annuities. We acknowledge that on occasion undesirable sales practices have been employed to sell or replace variable annuities, and we support the goal of adopting a rationale and pragmatic rule that would protect the public from predatory sales practices without unduly burdening ethical broker-dealers and their associated persons. So, in this spirit we submit our comments about the proposed rule regarding variable annuity sales practices, as described in NTM 04-45 ("Proposed Rule").

General Model
We believe that the current approach of modeling a suitability rule after the "best practices" guidelines discussed in NTM 99-35 is appropriate for variable annuities of all kinds. The current guidelines allow registered representatives to consider all of the unique characteristics and needs of investors in determining the suitability of a variable annuity investment. Because it is often impossible to generalize about what would be suitable for one investor versus another investor, we believe it is vital that the Proposed Rule provide enough latitude to allow for individual differences and avoid the tendency to impose narrow or fixed limits.

Disclosure and Prospectus Delivery
Requiring broker-dealers to develop a new disclosure document for each product they offer with information that is specific to each product would impose significant expenses and other burdens on broker-dealers. We have selling agreements with dozens of insurance issuers, each of which offer several variable annuity products. And each of those products' options may vary from state to state, due to individual state requirements. The cost to develop, maintain, distribute, and monitor the use of all these risk disclosure documents would be prohibitive. Also, from the insurance company's point of view, there would be major risks of inconsistent disclosures from one broker-dealer to the next and of inconsistencies between the proposed disclosure and the prospectus. If each broker-dealer is required to produce their own version of these disclosures, inevitably there would be widespread differences between them. In fact, insurance companies would undoubtedly want broker-dealers to obtain their prior approval before using all such disclosures. The resulting cost and confusion would lead to insurance companies producing the

disclosures for broker-dealer use, and broker-dealers would happily agree. We would then be left with the clumsy reality of a NASD requirement for broker-dealers being fulfilled by insurance companies, and insurance companies asking the SEC why they must produce two documents (risk disclosure and prospectus) with the same information.

We believe the proposed "plain English" risk disclosure that would explain specific features of a variable annuity product would be wholly redundant with the current prospectus that broker-dealers are required to give to the investor. Two years ago the SEC changed the Form N-4 registration instructions to require variable annuity prospectuses to begin with plain English "Risk/Benefit Summary" followed by a "Table of Fees and Expenses." Taken together, these elements of the current variable annuity prospectus provide all of the disclosures contemplated by the Proposed Rule. This is an unnecessary redundancy, and implies that the SEC's initiative failed to give variable annuity prospectuses meaningful and understandable disclosure. If the NASD believes the prospectus does not fulfill its purpose, we should help the SEC improve the prospectus, instead of giving investors another redundant disclosure document.

We would support a rule that would require broker-dealers give a general disclosure document to the investor, with information about suitability considerations that are generic to variable annuities, along with an acknowledgement that the registered representative had: a) gone over the Risk/Benefit Summary and Table of Fees and Expenses in the front of the prospectus with the investor; b) left a copy of the prospectus with the investor; and c) encouraged the investor to read the prospectus.

We would also support a requirement for an additional disclosure form to be used when the transaction is a replacement. However, a feature-by-feature comparison is often not possible. Often the features of the product being replaced cannot quickly be ascertained, which would lead to costly delays. We do believe it is important that the investor be specifically warned about the cost of surrender charges imposed by the replaced contract, front-end charges imposed by the new variable annuity, and the CDSC back-end charges and terms imposed by the new variable annuity. We also believe that a reason for the replacement should be documented to justify any costs the investor may bear. Acknowledgement of these issues should be incorporated into a special replacement disclosure form. If this information is provided by replacement disclosures required by state insurance laws and regulations, then an insurance form may satisfy this requirement.

Principal Review

We agree with the general concept that variable annuity purchases should be approved by a registered principal in keeping with the current NASD Rule 3010(d) on solicited transactions. However, one day is not sufficient time to allow a registered principal to properly review and approve or disapprove a transaction, and this requirement would unnecessarily put broker-dealers at constant risk of non-compliance. Even Rule 3010(d) allows two days for the approval of securities transactions by a registered principal. We believe the variety and complexity of variable annuities requires more time, not less time, to review variable annuity transactions than is allowed for securities transactions. Add to that, whenever a replacement is involved there is an added layer of analysis to be done. We believe that if a time limit must be assigned, it should not be less than two days after execution of the application.

Review of suitability should not be subject to fixed factors; they should be subject to general standards relevant to the particular investor. The diversity of investors' circumstances and needs coupled with the many options offered by a variable annuity cannot be subjected to a one-size-fits-all approach. Absolute limits, such as dollar amount invested and percentage of investor net worth, do not allow for the differences among investors. And by establishing such limits by rule, the NASD would be unintentionally creating an unmanageable risk of non-compliance for members if the investor fails to disclose other investments to the broker-dealer. We believe the Proposed Rule should give general standards and allow the registered representative and an informed investor to determine together what is suitable, subject to registered principal review.

Principal approval should be limited to the initial purchase of the variable annuity contract. Investors often add additional deposits to their variable annuity or transfer money between sub-account options by dealing directly with the issuing insurance company. In fact, periodic investment options are common. Requiring these payments to go through the broker-dealer would cause counterproductive delays and expense. The investor should not be limited by being required to submit additional deposits through the broker-dealer. Most of these additions or transfers are known and analyzed at the time of the initial purchase. Those that are not are checked at the time the investors' accounts are reviewed by the registered representative, as required by the SEC Books & Records Rule.

Other Issues

The proposed requirement for the principal to "sign" the disclosure and replacement documents may needlessly limit our procedures to using only original paper documents. Along with the rest of the industry, we are moving toward more electronic processes, which speed the delivery of products to the investor. Electronic recordkeeping also allows us to reduce the costs we must pass along to the investor. We recommend the Proposed Rule simply require evidence of registered principal approval, and allow us to satisfy that in any way already allowed by NASD Rules.

The presumption in the Proposed Rule that variable annuities are unsuitable for tax-qualified retirement plans is false. We agree with the NASD's prohibition of promoting the tax-deferred nature of variable annuities when they are used to fund retirement plans, because, when they are qualified, retirement plans already provide this tax benefit. However, it does not follow that by taking away tax-deferral as a benefit of investing in variable annuities there are no other reasons to invest in a variable annuity within a qualify plan. Variable annuities provide many benefits not found in other investments that can be beneficial as a vehicle for tax-qualified retirement plans. In fact, the primary goal of a retirement plan is not to obtain tax deferral, but to provide income for the investor's lifetime after retirement. Variable annuities are uniquely designed to provide income for as long as the investor lives, which is a feature that is not provided by other investment vehicles. Variable annuities also offer a variety of stepped-up benefits providing downside investment protection, living benefit withdrawal features, guaranteed fixed account options, and multiple fund manager options within one contract. Variable annuities should not be prohibited for use as vehicles for tax-qualified retirement plans.

Thank you for the opportunity for Transamerica Financial Advisors, Inc. to provide you with our comments on this Proposed Rule.

Sincerely,

Christopher Shaw
Vice President & Acting Chief Compliance Officer
Transamerica Financial Advisors, Inc.

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