



1st GLOBAL

THE BUSINESS DEVELOPMENT PARTNER TO
LEADING WEALTH MANAGEMENT FIRMS

July 19, 2006

submitted electronically to
rule-comments@sec.gov

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: 1st Global Capital Corp response to proposed NASD VA Proposal
File No. SR-NASD-2004-183, Amendment Number 2

Dear Ms. Morris:

1st Global Capital Corp. ("1st Global") is a fully disclosed retail broker-dealer registered to conduct business in all domestic jurisdictions, with over 1200 Registered Representatives offering securities services through nearly 625 branch locations.

As the Chief Executive Officer of 1st Global, I appreciate the opportunity to submit comments on the issues raised in the above captioned new rule proposal by the National Association of Securities Dealers, Inc ("NASD").

With a minimal number of exceptions relating to the capture of several additional pieces of customer information, the rule proposal does not contain any substantive customer protections that are not already provided by existing NASD rules. The only real purpose of this proposal seems to be increasing the burden of capturing documentation on the part of broker-dealers. Of course, the consequence will be increased regulatory enforcement activity of a books and records variety as opposed to substantive suitability transgressions. For these reasons, 1st Global is NOT in favor of enactment of this proposal.

1st Global offers the following additional comments.

1. 1st Global urges the NASD to place additional emphasis on the enforcement of the existing Conduct Rules as opposed to solving every perceived problem with the introduction of a new rule.

1st Global is concerned that the NASD believes it has to go far beyond the suitability criteria contained in its general suitability rule (Rule 2310) to establish a product specific suitability rule directed only at Variable Annuities. The only other product specific suitability tests imposed by the NASD outside Rule 2310 apply to options, currency warrants, index warrants and securities futures (see Rules 2860 and 2865). The suitability standards for securities futures described in Rule 2865 are not as onerous as those proposed by the NASD for Variable Annuities.

The establishment of a new suitability rule for Variable Annuities is unwarranted. If Rule 2310 provides satisfactory suitability standards for all other products except the volatile, high-risk products mentioned above, it should be appropriate for determining the suitability of Variable Annuities.

It is interesting to note that common stock is the product type listed on the NASD Dispute Statistics website as the number 1 product type which is involved in securities arbitration claims. Common stock holds that distinction year after year since 2002 which is the first year for which statistics have been provided. Year to date common stock is the product type which is the subject of an arbitration claim at a rate almost 3 times as high as variable annuities. It would seem that if any product type warranted a specific suitability standard and mandates for training, that product type would be common stock.

2. Product specific criteria listed by the NASD are unclear or redundant and warrant deletion or detailed explanation.

Paragraph (b)(2) of the Proposed Rule provides that a member must make reasonable efforts to obtain certain product specific suitability information about the customer prior to recommending a Variable Annuity purchase or exchange. We are concerned that certain product specific criteria listed by the NASD are unclear. For example, among the specific information required by the rule is the client's "financial situation and needs". This seems redundant as the other required information includes annual income, liquidity needs, liquid net worth and tax status. Doesn't income, net worth and tax status constitute one's financial situation?

3. The proposal's obligation to inform customers of the material features of a variable annuity is duplicative of the current duty to provide a prospectus and is therefore unnecessary or, if not duplicative, overly vague and in need of adequate explanation as to intended purpose.

1st Global has concerns about the Proposed Rule's requirement that members inform customers of the material features of Variable Annuity products.

Subsection (b)(1)(A) of the Proposed Rule prohibits a member from recommending the purchase or exchange of a Variable Annuity to a customer unless, among other things, it has a reasonable basis to believe that the customer has been informed of specific delineated material features of Variable Annuity products. Would evidence of the distribution of the specific product's prospectus be sufficient to achieve compliance with this provision?¹ If not, what other disclosures would be required? If the disclosures provided by the financial advisor were generally accurate, but inaccurately described the features of the specific Variable Annuity product the client purchased, would the financial advisor and member firm be protected by the terms of the Proposed Rule?

4. The proposal's obligation to provide training is duplicative of the current duty imposed under the NASD's firm element continuing education rule as well as the continuing education requirements of the states that issue insurance licenses.

1st Global is concerned with the Proposed Rules requirement that member firms develop training policies and programs reasonably designed to "ensure" that financial advisors and registered principals involved in the sale and supervision of Variable Annuity products comply with the requirements of the Proposed Rule and understand the material features of Variable Annuities. Unfortunately, even the best training policies and materials will not "ensure" such understanding. Instead the obligation to understand the material features of the product a financial advisor sells to his client is inextricably bound up in NASD Conduct Rule 2310's requirement that a member make suitable recommendations to his client. Therefore, there is no apparent need for this additional training requirement that will merely serve to create new books and records obligations for member firms. In addition, 1st Global notes that several recent NASD rule proposals (e.g., the gifts and business entertainment proposal contained in NTM 06-06) have sought

¹ The MSRB's interpretative guidance on 529 plans as adopted in MSRB NOTICE 2006-16 (JUNE 15, 2006) provides that certain material disclosure obligations may be met if the disclosure appears in the program disclosure document. In making its determination not to require an obligation on the part of broker-dealers to separately make such a disclosure where the information is already contained in the program disclosure document, the MSRB stated that such a mandate would have "imposed unprecedented new obligations on dealers to become sufficiently knowledgeable about many or potentially all investment options available in the 529 college savings plan market (including a large number of 529 college savings plans that the dealer does not offer) in order to provide accurate disclosures and to arrive at appropriate conclusions in connection with a comparative suitability analysis."

to impose separate and unique training requirements. 1st Global believes that the NASD should refrain from educational mandates and instead rely upon the firm element continuing education provisions of NASD Conduct Rule 1120. This approach would allow NASD member firms to evaluate and prioritize their financial advisors' training needs and design a program that is appropriate to the task. The NASD would then have the opportunity to review the firm's training program for compliance with the minimum standards outlined in Rule 1120. If the firm's financial advisors engage in a significant volume of Variable Annuity transactions, the training program would be required to focus significant attention to the general investment features and risk factors associated with these products. If, however, the firm's financial advisors do not sell Variable Annuity products, training assets could be dedicated to training on more relevant topics. In this way, firms can more effectively allocate their training resources to address the unique needs of their firms.

It should also be noted that those individuals who sell Variable Annuities must be licensed at the state level. All states have enacted continuing education requirements for insurance licensees to maintain their license. Therefore, those individuals which sell variable annuity products are already subject to specific insurance continuing education requirements. A NASD requirement specifically requiring Variable Annuity training is redundant in this regard also.

In summary, we are opposed to the adoption of the Proposed Rule.

Again, we thank the Commission for the opportunity to comment on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "S.A. Batman".

Stephen A. Batman
CEO