

September 19, 2005

Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-9303

Sent Via Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: File Number SR-NASD-2004-183; Release Number 34-52046A  
Proposed Rule Relating to Sales Practice Standards and Supervisory Requirements for  
Transactions in Deferred Variable Annuities (Proposed NASD Conduct Rule 2821)

Dear Mr. Katz:

We are submitting this letter in response to a request for comments by the Securities and Exchange Commission ("SEC") on a rule recently proposed by the National Association of Securities Dealers, Inc. ("NASD"). Great American Advisors®, Inc. ("GAA") appreciates this opportunity to respond to the SEC's request for comments.

While GAA understands that deferred variable annuities are complex products with many intricate features, we are 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 deferred variable annuities. The proposed rule, which would be established as NASD Conduct Rule 2821, will place additional hardships and limitations on our firm directly impacting our business structure and our ability to provide a robust product offering to our customers.

The proposed rule creates certain standards which cannot reasonably be applied uniformly to all broker/dealers. For example, the proposed rule provides that a principal shall consider, in their review of a specific transaction, the appropriateness of a sale: (1) to a customer over a certain age; and (2) where the amount being invested exceeds a stated percentage of the customer's net worth or is more than a stated dollar amount. In each case, the member must establish its standards for "certain age", "stated percentage" and the "stated dollar amount." Since the NASD clearly has some standard in mind, it should specifically state either the minimum standard it deems acceptable for each criteria, or preferably a range, so that members are operating within the same regulatory requirements. Also, by specifically stating the standards in the rule, the NASD will avoid the inevitable consequence that different NASD districts will establish and impose their own standards, which will likely vary from district to district.

The proposed rule provides that a broker/dealer may not recommend the purchase, sale, or exchange of a deferred variable annuity unless it has a reasonable basis to believe, among other things, that the customer has a long-term investment objective. This language would permit the NASD to take the position that it is per se unsuitable to recommend a deferred variable annuity to any customer who meets all of the other suitability criteria except that he/she does not have a long-term investment objective. GAA believes that time horizon should be only one factor in determining suitability and it should be measured on a case by case basis in light of the deferred variable annuity's features and the customer's other investment objectives and needs. As such, we believe the NASD should include time horizon as one of the suitability criteria listed in proposed

rule. Alternatively, if the NASD does intend for time horizon alone to be the determinate of whether a recommendation can be made, the NASD must define what it means by "long-term investment objective" so that broker-dealers will have a clear standard to apply to deferred variable annuity transactions. Because of the features and benefits of deferred variable annuities, not all require a customer to have a long-term time horizon.

We do acknowledge the complexities associated with deferred variable annuities and we agree that training and supervision are essential elements to the success of any broker/dealer. The proposed rule requires member firms to develop and document training policies and programs designed to ensure that associated persons who sell and supervise deferred variable annuities understand the general material features of the products, including liquidity issues, sales charges, fees, and market risks. GAA consistently focuses on these issues in compliance meetings, continuing education training, and supervision of deferred variable annuity transactions. GAA supports this element of the proposed rule as these are complex products with features and internal costs that vary widely. We support the NASD's effort to mandate more consistent and better training for registered representatives and supervisors, including product presentations and registered representative training by product sponsors.

Deferred variable annuity sales comprise over 40% of GAA's total business. Currently, we are able to offer our customers a wide range deferred variable annuity products designed to meet their investment objectives, risk tolerance, investment time horizon, tax situation, etc. The proposed rule would severely limit GAA's ability to continue to provide such a comprehensive product offering to our customers. Subsequently, GAA will experience a significant deduction in revenue under this proposed rule.

GAA operates under an Office of Supervisory Jurisdiction ("OSJ") supervisory structure. In addition, each OSJ is carefully supervised by the Home Office. However, the limitations and restrictions imposed by this proposed rule would require our firm to eliminate such a structure. Subsequently, all deferred variable annuity transactions would be required to be submitted through GAA's Home Office for review and approval prior to being submitted to the product provider. This process would require GAA to increase Home Office personnel solely for the review deferred variable annuity transactions. It is unlikely that GAA would be able to increase personnel while limiting revenue.

The financial hardships and limitations that the proposed rule would place on our firm would require us to take careful consideration of our long-term viability of remaining a broker/dealer. The increase in costs to comply with such proposals materially restricts the growth and development of broker/dealers alike. We are confident the SEC will thoroughly consider the impact this proposal will have on all broker/dealers. We are pleased to have the opportunity to provide comments and hope that our comments can assist the NASD and SEC in developing rules related to deferred variable annuities that are fair, sensible, and appropriate for all participants offering these products.

Sincerely,  
Shawn M. Mihal  
Chief Compliance Officer  
Great American Advisors®, Inc.