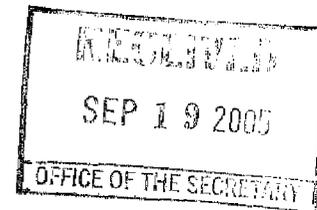




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September 15, 2005

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



Re: File Number SR-NASD-2004-183; Proposed Rule 2821
Members' Responsibilities Regarding Deferred Variable Annuities

Dear Mr. Katz:

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 recommendation requirements, principal review and approval, supervisory procedures, and training related to transactions in deferred variable annuities. We filed a comment letter dated July 22, 2004 relative to Notice to Members 4-45 regarding the same subject matter. Regrettably, the proposed rule filing is even more onerous than that proposal. Our comments are directed at the first three subjects as well as the stated purpose of the rule.

PURPOSE OF THE RULE

Consistent with the previous Notice to Members, the rule purports to enhance investor protection. As regulatory filings and regulator comments of the last two years will substantiate, securities regulators have simply concluded that deferred variable annuities are dangerous to investors. From early assertions that deferred variable annuities are **never** suitable in an IRA to the current rule proposal, it is obvious that a lack of understanding exists at the regulatory level of the features and benefits of this product.

The implied purpose ignores the needs of some seventy million "baby boomers" that are moving toward retirement. Unlike their parents who had significant reliance on defined benefit plans for a baseline retirement income, these individuals have a dire need for flexible savings vehicles that accommodate both the accumulation and distribution phases of their lives. They need features such as principal guarantees, income guarantees, death benefits and the flexibility to move between fixed and variable accounts without immediate tax consequences. Deferred variable annuities are one of the few investment vehicles providing such solutions. Many experienced investors have purchased variable annuities because of such features and benefits; not because they were subjected to improper sales practices.

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 representing 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.*

With nearly 5,000 members, representing more than 17,000 locations nationwide and employing over 260,000 Americans, ICBA members hold more than \$631 billion in insured deposits, \$778 billion in assets and more than \$493 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

RECOMMENDATION REQUIREMENTS

The proposed rule sets an ambiguous, if not dangerous precedent, in the requirement to determine that the customer has a need for a deferred variable annuity “as compared to other investment vehicles”. Where does the comparison begin...and end. With institutional and retail, foreign and domestic securities? Equities or fixed income? Such a requirement is impractical, if not impossible, to comply with.

PRINCIPAL REVIEW AND APPROVAL

One of the most troubling aspects of the proposed rule is the requirement that the supervisor step into the shoes of the registered representative in the suitability determination. The supervisor simply offers a second opinion of another registered representative. This is no doubt a holdover from earlier proposal drafts that compared deferred variable annuities to options. There is quite simply little correlation in the risk involved to the investor between a deferred variable annuity and an option. Thus, the proposed rule sets yet another dangerous precedent by establishing a product specific supervisory structure not justified by excessive or unusual investment risk.

Equally troubling is the effort to tie a specific age limit to suitability. Individuals have different investment needs; age is but one aspect of the suitability determination. In our opinion, setting a maximum age is discriminatory. Why should a person who needs the benefits of a deferred variable annuity and is willing to pay for those benefits be arbitrarily denied because of their age?

The amended rule proposal requiring supervisory approval prior to submission to the insurance company continues, as did the previous Notice to Members, to ignore the trading and order execution technology in place in the brokerage industry today.

SUPERVISORY PROCEDURES

The defects in the proposed rule as it relates to the difficult requirement of “comparison to other investment vehicles” as well as the age discrimination issue have been enumerated above. Further, adopting a product specific supervisory structure that is not justified by excessive or unusual investment risk could have far reaching impact on the course and conduct of the supervisory structure within the industry.

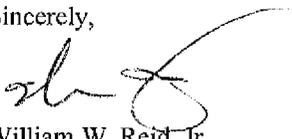
CONCLUSION

In our previous comment letter, we were one of 34 commenters (out of 1129 in total) supporting a rule with sensible modifications to serve the purpose of investor protection. Our comments and those of 1,095 other interested parties obviously fell on deaf ears. Despite this overwhelming opposition to the previous rule proposal, the newly proposed rule is more onerous than ever. The proposed rule is not about investor protection. It is about profiling a product as ‘evil’ without adequate consideration of the features and benefits to the investing public.

The proposed rule is detrimental to both the investing public and the industry. It should be withdrawn.

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

Sincerely,



William W. Reid, Jr.
President/CEO