

**VIA ELECTRONIC MAIL**

September 19, 2005

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

Re: File Number SR-NASD-2004-183

Dear Mr. Katz:

Mutual Service Corporation (“MSC”) is a broker-dealer member firm of the National Association of Securities Dealers, Inc (“NASD”) and is a wholly owned subsidiary of Pacific Select Distributors, Inc. We at MSC appreciate the opportunity to comment on the proposed new Rule 2821. It is our understanding that if adopted, Rule 2821 will impose new requirements specifically tailored to the recommendation, suitability determination, supervision, training, principal review and approval of transactions in deferred variable annuities (“VAs”).

We agree that these products have many features that make them complex investments. We support in principal the concept of adapting the existing best practice guidelines into a rule that would uniformly apply across the industry. However, the Proposed Rule would go further by imposing significant new burdens on broker-dealers. We believe there are options that could address the perceived problems relating to the offer and sale of variable annuities in a more effective and cost-efficient manner than the Proposed Rule. Some of these options include the mandatory review (by the client) of existing guidance from the Staff (“Variable Annuities: What You Should Know”), or the NASD’s companion piece (“Should You Exchange Your Variable Annuity?” if applicable), continuing to gather and distribute templates of best practices as part of routine examinations of NASD member firms and product sponsors, and, most importantly, opening a dialog with the members of the NAIC.

We believe that the insurance industry should shoulder a significant part of assisting those member firms that sell their products to come into compliance with the new Rule. Indeed, we would submit that it may be all but impossible to comply without their assistance. We also believe that the more clearly the NASD defines the requirements, the easier it is for member firms to comply. We understand that there are many different shapes, sizes and capabilities when it comes to tailoring specific guidance to NASD member firms, however the ancillary benefit to the industry, and in turn to the consumer, is a level playing field for those of us offer VAs for our client’s consideration. Our specific concerns about the Proposed Rule are outlined below.

## Concerns with the Proposed Rule

Product Specific Suitability Criteria - 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 VA purchase or exchange. Although we support the NASD's listing of specific suitability criteria necessary to support a recommendation, we are concerned that certain product specific criteria listed by the NASD are either unclear or irrelevant to a suitability determination. In addition, "long-term investment objective" needs to be defined as an overriding factor or one that should be given additional prominence if that is intended to be the case.

Principal Review - The Rule requires that a supervising principal more or less duplicate the Representative's role with respect to each VA transaction. Future enforcement actions may show that this created an unfair exposure to personal civil liability for the Supervisor. A duplication of the Representative's role would require that a Supervisor have detailed personal knowledge of the customer and sign off on a detailed suitability summary. In the case of a VA transaction involving a 1035 exchange, the supervisor would be required to personally review a detailed comparison of the old and new contracts.

A Firm providing access to a high volume of variable contracts would be forced to allocate additional supervisory staff resources. We expect hind-site to show, as it did for the breakpoint initiative, that this additional staff time statistically provided little or no additional protection to the investing public, but diverted supervisory resources away from other duties in a costly way. Paragraph (c) 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.

We are concerned by the fact that the NASD believes it has to go far beyond the suitability criteria contained in its general suitability rule (Rule 2310). Some of which rival or exceed those imposed on other product lines (such as options, penny stocks, hedge funds and commodity pools). The suitability standards for securities futures described in Rule 2865 are not as onerous as those proposed by the NASD for VAs. The establishment of a new suitability rule for VAs 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 VAs. If the NASD believes that additional product-specific suitability criteria should be applied to VAs, it should develop those criteria through discussions with the members of the NAIC and product manufacturers.

Training - Paragraph (e) of the Proposed Rule requires members to develop and document training policies and programs designed to ensure that associated persons who sell and supervise VAs understand the general material features of the products, including liquidity issues, sales charges, fees, and market risks. We support the

NASD's efforts in this regard. The NASD, through their continuing education requirements, already has the framework built to implement additional training. We propose that they constructively adapt this existing system for this purpose.

Disclosure - We believe that a "plain English" summary of risks and features combined with a Q&A that covers commonly misunderstood or confusing issues would encourage customers to read at least those portions of the prospectus that are most meaningful to their investment decision. Indeed, the beginnings of which are listed earlier in this letter.

Unintended Consequences - We do not believe any perceived sales abuses have occurred because the NASD's rules and enforcement mechanisms were not strong enough to prevent them. In addition, the definition of several key components to the suitability determination process are (with all due respect), vague enough that left in their current state, will provide an opportunity to fuel concerns in the industry that in many cases today, the NASD is creating these definitions within the precedents set in enforcement actions, and not during the promulgation of Rules.

#### Additional Definitions

We feel that the NASD needs to define the following in more detail:

- "long-term investment objective" so that broker-dealers have a clear standard to apply to VA transactions.
- "certain age", "stated percentage" and the "stated dollar amount."
- Legitimate intended use"
- "existing investment and insurance holdings"

Again, thank you for the opportunity to comment on the proposed Rule. Should you or any member of the Staff find that they have additional questions, please contact me at: (561) 835-4100.

Respectfully submitted,

Timothy J. Lyle  
Senior Vice President and CCO  
Mutual Service Corporation