

Mr. Jonathan G. Katz
Office of the Secretary
Securities Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

September 20, 2005
via e-mail attachment

RE: File Number SR-NASD-2004-183: NASD Rule 2821 Proposed Rule and Rule Change Release

Dear Mr Katz:

On behalf of A.G. Edwards & Sons, Inc. (“A.G. Edwards”), I would like to thank the Securities and Exchange Commission (“SEC”) and National Association of Securities Dealers (“NASD”) for continuing to work with the broker-dealers in refining proposed Rule 2821, and for providing this opportunity to comment on the current draft of Rule 2821. As was previously stated in A.G. Edwards’ comment letter to the NASD¹ regarding Notice to Members 04-45, we strongly support recent regulatory efforts to ensure that variable annuity transactions are both suitable and adequately supervised. However, although Edwards favors the primary aims of Rule 2821, Edwards maintains several significant concerns with regard to certain requirements of the current proposed Rule.

I. *Long-Term Investment Objective Requirement*: Under the current draft of proposed Rule 2821, the NASD has created a bright-line rule that a registered representative cannot recommend a deferred annuity to a customer unless the customer has a long-term investment objective. Edwards believes that such a requirement is overly restrictive and not necessarily in the best interests of all investors. While we understand that deferred annuities are, and need to be, positioned as long-term investment vehicles, it is also true that these products, via available riders or features, may be structured to meet short-term client needs. Specifically, features such as income benefits and withdrawal benefits may allow investors to access a portion of their funds without a penalty. Such features provide clients with needed liquidity while preserving the long-term protection feature. Likewise, often a deferred annuity is just one of several investments that comprises the insurance component of a portfolio owned by an investor who does not otherwise have a long-term objective. By itself, a deferred annuity investment may not appear to be optimal for a client, even though it is in fact a suitable investment and an important piece of the overall portfolio and the investor’s financial plan. The current Rule 2821 will preclude certain investors from purchasing annuities even though they may be both suitable and beneficial to the investor.

For reasons such as those outlined above, A.G. Edwards has significant concerns with regulations such as the proposed Rule 2821 that impose bright-line suitability standards. In keeping the best interests of investors at the forefront, A.G. Edwards feels strongly that is important to act in a manner consistent

¹ Letter to Mrs. Barbara Z. Sweeny re: NASD Notice to Members 04-45 Relating to Deferred Variable Annuity Sales, dated August 9, 2004.

with the well-established position that the circumstances of each client and product should be taken into consideration when evaluating the suitability of a transaction. While the proposed Rule 2821 requirement of a long-term investment objective for deferred annuity purchasers may curb some unsuitable transactions, it does so by imposing an inappropriate restriction on both investors and the registered representatives who work with investors to identify alternatives to help them achieve their objectives.

II. *Need for Features of a Deferred Variable Annuity as Compared to Other Investment Vehicles*: Under the current proposed Rule 2821, a registered representative cannot recommend a deferred variable annuity unless the representative reasonably believes that the customer has a need for the features of a deferred variable annuity as compared with other investment vehicles. Though neither the text of proposed Rule 2821, nor the accompanying NASD rule change release explain or provide guidance on how one would establish that a customer has a need for the features of a deferred variable annuity, as compared to other investment vehicles, it would seem to require the registered representative to believe that the deferred annuity is the “best” investment for the client when compared with other investment vehicles before recommending the annuity. A.G. Edwards objects to this requirement as it is inconsistent with well-established industry practices for other securities products and imposes an unreasonable burden on registered representatives.

For all investments in securities, it has long been the primary responsibility of a registered representative to help clients identify investments that are suitable in light of their objectives and provide the client with information regarding the features, risks, benefits and costs of each investment so that the client may make an informed decision on which investments to select. Under proposed Rule 2821, however, before a registered representative can assist clients in identifying and understanding suitable investment products, the registered representative is tasked with making a speculative judgment call as to whether a deferred variable annuity is the “best” investment alternative for the client. A.G. Edwards feels strongly that this requirement is inappropriate, as any such determination would be imprecise and highly subjective. While we acknowledge that many of the features/benefits of a deferred variable annuity can be achieved through combinations of other investments, it cannot be said that one alternative is the “best” given that the importance of certain intangible factors, such as reputation of or past experience with the insurance company issuer or investment manager of the annuity sub-accounts, may vary greatly from person to person. Certainly, a registered representative should determine that a annuity and its features are suitable for a client, but requiring them to determine that the product and features are suitable *and* the “best” of all alternatives is overreaching. As with all other investments, a registered representative should not be required to make such a determination, but rather the representative should be encouraged to identify and explain the various suitable investments, so that a well-informed investor can properly decide which investment alternative is best for their individual needs.

III. *Highlighting Material Features of the Deferred Variable Annuity*: A.G. Edwards was pleased to find that in the current draft of Rule 2821 the NASD removed the specific written-disclosure requirements. However, it appears that in place of written-disclosure statements, under the current version of Rule 2821 registered representatives are required to “highlight” certain features of the deferred variable annuity product.² Additionally, though the information that must be “highlighted” under Rule 2821 is contained in the annuity product prospectus, the NASD has indicated that a registered representative will

² See Footnote 11, p. 18 of the NASD Rule 2821 Proposed Rule Change Release stating: “The associated person should at a minimum highlight for the customer the following material features of the deferred variable annuity: (1) the surrender period; (2) potential surrender charge; (3) potential tax penalty if the customer sells or redeems the deferred variable annuity before he or she reaches the age of 59½; (4) mortality and expense fees; (5) investment advisory fees; (6) charges for and features of enhanced riders, if any; (7) the insurance and investment components of the deferred variable annuity; and (8) market risk.”

not satisfy the “highlighting” requirement of Rule 2821 by delivering the prospectus to a client.³ Since a registered representative cannot actually mark or otherwise modify a prospectus, it would seem that the “highlighting” requirement would require the registered representative to communicate these items by some other means, such as an oral communication or through a written summary sheet. A.G. Edwards feels that requiring a registered representative to prepare a separate product disclosure document, in addition to the prospectus is misplaced and inappropriate.

While A.G. Edwards agrees that it is important for investors considering deferred variable annuities to be aware of and understand material information regarding the annuity product, we feel strongly that the investor should be directed to read the product prospectus for specific product information. As stated in our previous comments to Rule 2821, A.G. Edwards continues to maintain that the product prospectus should be the fundamental, stand-alone source of information regarding product information, features, risks and expenses. Any rule requiring disclosures or information to be communicated by some means other than the product prospectus substantially weakens the function of the prospectus as the primary source of information about the product. To this end, A.G. Edwards maintains that the most effective means to enhance product information disclosure is for the NASD to work with the SEC to revise existing prospectus requirements to require a summary section containing the material deferred variable annuity information *and* by requiring issuers to provide and maintain the prospectus and summary information on their websites. Additionally, A.G. Edwards strongly recommends that the NASD position be modified so that a registered representative will have fulfilled any product disclosure obligation by delivering a prospectus with this information to the client.

In addition to the above comments, A.G. Edwards generally supports the positions stated in the Securities Industry Association’s (“SIA”) September 19, 2005 letter to the SEC addressing the NASD’s Rule 2821 proposal.⁴ Specifically, A.G. Edwards agrees with the SIA position that the NASD’s current rules are meaningful and satisfactorily address the NASD’s objectives and concerns regarding suitability determinations for deferred variable annuity transactions. Likewise, A.G. Edwards agrees with the SIA’s contention that Rule 2821 will offer only an incremental benefit with regard to regulatory compliance. Instead, A.G. Edwards is concerned that the overwhelming burdens that Rule 2821 places on financial services firms will have a chilling effect on deferred variable annuity business as a whole and will discourage registered representatives from recommending deferred variable annuities to any client, even though a deferred variable annuity may be suitable and potentially beneficial to the client. A.G. Edwards feels that this result would be a disservice to the investing public.

Again, I thank you for your time and consideration in taking our comments to the NASD’s proposal. A.G. Edwards looks forward to continuing to work with the NASD and SEC on regulatory issues such as this, and we hope our combined efforts will benefit investors and the industry.

Sincerely,

Thomas M. Yacovino
Vice President
A.G. Edwards & Sons, Inc.

³ See Footnote 11, p. 18 of the NASD Rule 2821 Proposed Rule Change Release.

⁴ See letter dated September 19, 2005 from Mr. Ira D. Hammerman (SIA) to Mr. Jonathan G. Katz (SEC).