September 19, 2005

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

Via e-mail (rule-comments@sec.gov)

Re: File No. SR-NASD-2004-183

Dear Mr. Katz:

The American Bankers Insurance Association ("ABIA") and the ABA Securities Association ("ABASA", ABIA and ABASA hereinafter referred to collectively as the Associations) are pleased to provide the following comments concerning the referenced NASD proposed rule establishing new suitability requirements and related supervisory obligations for the purchase and exchange of deferred variable annuity contracts (hereinafter referred to simply as variable annuities). The Associations' members include banking organizations, bank owned broker/dealers and insurance companies that sell and/or underwrite variable annuities.

Bank distribution of variable annuities through their broker/dealer affiliates is widespread. More than 90% of banks with assets above $10 billion distribute variable annuities; 66.7% of banks with assets between $1 and $10 billion and 25.8% of banks with assets of less than $1billion also sell this product. [1] Most small banks sell variable annuities through a securities affiliate or third party marketing arrangement; however, the largest banks utilize their bank branch system more efficiently. Banks over $10 billion in assets achieve approximately 41% of their variable annuities volume through transactions

[1] The ABIA's 2004 Study of Leading Banks in Insurance, by contract with Reagan Consulting, Atlanta, GA.

that originate in the branch. The remaining 59% of volume is sold through a wholly owned securities affiliate.

Banks have been selling variable annuities for a long time. More than 92% of respondents to the 2004 Study say they have sold variable annuities for longer than 3 years. Since 1997, annuities sales – both variable and fixed – account for about 66% of the premium volume sold by banks. About 16% of banks selling variable annuities choose to underwrite the annuities that they sell.

It is because the members of these Associations have so much experience with variable annuities contracts that they have concerns with the proposed rule. The proposed rule appears to duplicate disclosure requirements that are already in place; create new, significant compliance burdens; create confusion among consumers; and expose broker-dealers to class-action lawsuits if they fail to live up to new suitability standards that are not clearly defined and are subject to interpretation.

New, Uncertain Disclosure Obligations

A major concern with the proposed rule is the requirement that, before making a recommendation concerning the purchase or exchange of a variable annuity, a member (or associated person) must “have a reasonable basis to believe that . . . the customer has been informed of the material features of the deferred variable annuity.” This requirement appears to place a significant new disclosure obligation on a broker-dealer to develop and maintain point-of-sale disclosure documents, but it is not clear what that obligation is. Is it merely a duty to ensure that the investor has received a prospectus, or is it a duty to create a separate disclosure document?

If the purpose of the proposed rule is to require the development of *new* disclosures, what form should the new disclosure take? As annuity providers, insurance companies already have a duty to develop disclosure documents for variable annuities, which they satisfy through the prospectus and Statement of Additional Information that must be provided to the variable annuity purchaser. The prospectus is a highly regulated document that is designed to communicate all of the important information a customer needs to make a decision whether to purchase a variable annuity. Presumably, the prospectus satisfies the the proposed rule’s requirement that a consumer be informed of the “material features” of the variable annuity. If the prospectus does not meet this test, how would a *new* disclosure remedy such a failing?

Alternatively, if the requirement in the proposed rule, that a member ensure that the customer “has been informed” concerning the material features of the product, is to be interpreted as a requirement to provide another disclosure *in addition to* the disclosures separately provided by the insurance company, registered representatives would be placed in the untenable position of having to develop disclosures without knowing what additional disclosure is required or without knowing in what form the disclosure should take.

In sum, if the NASD does not believe that current prospectuses contain adequate disclosures, it should work with the SEC to amend the prospectus disclosure requirements already in place. If it believes there is a need for a broker-dealer to develop additional disclosures, it should provide clear standards as to what those disclosures should be. The proposed rule takes neither approach.

Additional Compliance Burdens

Having to develop new disclosures to satisfy these new suitability requirements represents a significant compliance costs for broker-dealers, in both time and money. There is the obvious cost of developing, printing and updating disclosure documents. Moreover, since the proposed rule does not provide any standards or guidance as to what additional disclosures are required, every broker-dealer that sells variable annuities will have to seek out legal counsel to develop the disclosure contents. There also will be a need to periodically update the disclosure documents, since the requirement to provide the additional disclosures without clear guidelines likely will result in the disclosures taking shape largely in response to regulatory enforcement actions.

Implementing the new suitability regime carries with it costs of its own. The proposed rule would demand a significant amount of time for compliance from different levels of management. To make a suitability recommendation, the proposed rule would require a member or associated person to attempt to obtain from an investor 12 different types of information, including the open-ended "such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers." The proposed rule would require a registered principal to make a second suitability determination to ascertain whether he or she approves of the transaction being recommended.

The proposed rule also requires a registered principal to screen for inappropriate transactions, but without providing any guidance for the principal to use to develop a screening mechanism. For example, the proposed rule uses the phrase "standard [to be] established by the member" four times in discussing the supervisory duties for registered principals; however, there are no benchmarks given to aid supervisors, such as appropriate parameters for considering a customer's age, net worth, and "long term" investment objectives in evaluating the suitability of a recommendation.

Adverse Impact on Consumer Understanding of the Product

One goal of disclosure is to provide consumers with simple, easy-to-understand, consistent information about the product they are buying. The proposed rule would result in multiple disclosures from different sources without consistent information. Consumers already receive disclosures of material features in the form of the insurance company's prospectus. Criticism already exists suggesting that the prospectus is too complex an instrument; how would mandating more disclosure alleviate this? Because there are no uniform guidelines for developing the disclosures, it is conceivable that an investor could receive multiple disclosure documents regarding the same product. Such a result would clearly be contrary to the goal of educating the consumer with the most accurate, least confusing disclosures.

Potential Liability

Finally, because the proposed rule contains vague requirements regarding the parameters for evaluating and weighing the various factors that go into making a suitability determination, and because it places new burdens on broker-dealers, it could result in greater exposure for broker-dealers to class-action litigation. This would be an unwelcome outcome.

Sincerely,

Beth L Climo
Executive Director
ABA Securities Association
American Bankers Insurance Association