September 19, 2005

Via E-Mail
Jonathan G. Katz
Securities Exchange Commission
100 F Street, N. E.
Washington, D.C. 20549-9303

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

Dear Mr. Katz:

1717 Capital Management Company and Nationwide Securities, Inc. (the "Companies")[1] appreciate the opportunity to submit their comments concerning proposed NASD Rule 2821 (the "Proposed Rule").

Introduction

The Companies recognize that deferred variable annuities are complex products with many features that can be difficult for investors to understand. Accordingly, the Companies strongly support sales practices that include adequate training and supervision of sales representatives, product recommendations that are based upon proper suitability determinations and effective investor education.

We are concerned, however, that to the extent the Proposed Rule imposes an additional layer of regulatory requirements for deferred variable annuities that would not be applicable to sales of other types of securities, there may be no incremental benefits to be gained and there could very well be significant additional costs incurred by member firms that have not been taken into account by the NASD staff. In that regard, we believe that many of the Proposed Rule's requirements are significantly and unnecessarily duplicative, given the NASD Conduct Rules already in place, including Rule 2310 (governing suitability), IM-2310-2 (governing fair dealing with customers), Rule 3010(d)(1) (governing the review of transactions) and IM-3110 (governing customer account information). Rule 2310, for example, provides criteria for product

[1] The Companies are indirect subsidiaries of Nationwide Mutual Insurance Company. Each of them is a registered broker-dealer and an NASD member firm that is authorized, pursuant to Selling Agreements with variable annuity issuers, to sell deferred variable annuities.

recommendations that are made to customers. Rule 2310 requires that a member must have reasonable grounds for believing that a recommendation is suitable on the basis of facts that are disclosed regarding the customer's financial situation and needs. In that regard, members must make reasonable efforts to obtain pertinent information about the customer. We do not believe that a product-specific suitability rule for deferred variable annuities is warranted. In addition, we question whether the Proposed Rule is needed, given the complaint history regarding variable annuities, as outlined by the American Council for Life Insurers ("ACLI") in its comment letter to the NASD, dated August 9, 2004.[2] A more effective way of dealing with improper sales practices relating to deferred variable annuities would, in our view, include (i) more meaningful, easy-to-understand disclosures of product features, costs and expenses in product prospectuses, (ii) enforcement of the existing NASD Conduct Rules pertaining to product recommendations and the supervision of registered representatives and (ii) enhanced training requirements for registered representatives and supervisory principals.

If, however, the SEC staff chooses to authorize the adoption of the Proposed Rule, the Companies recommend several modifications and clarifications, which are more particularly described below.

Recommendation Requirements

Paragraph (b)(1)(B) of the Proposed Rule requires that the member firm or its associated persons have a reasonable basis for believing that the customer has a long term investment objective. For purposes of determining the suitability of deferred variable annuities, we submit that a long term investment objective is not a necessary prerequisite in all instances. Certain variable annuities are offered without deferred sales charges. Other variable annuities are offered with surrender charge waivers for certain withdrawals. We believe that a more appropriate reference in this instance would be a determination that the product that is being recommended is compatible with the customer's investment objectives.

Paragraph (b)(1)(C) of the Proposed Rule requires a reasonable basis for believing that the customer has a need for the features of a deferred variable

[2] In its comment letter, the ACLI noted that unsuitable annuity sales account for only .0032 of the NASD's total disciplinary actions on average over the past five years. To provide perspective, the ACLI indicated that there were 19,562,666 individual variable annuity contracts in 2000. The ACLI further noted that the SEC logged 14 times as many equity security complaints as variable annuities and 4.5 as many mutual fund complaints as variable annuities for the 12 months ending May 31, 2004.

annuity as compared with other investment vehicles. If an investor understands the features of a variable annuity that has been recommended and desires to purchase that variable annuity and the registered representative has determined that such annuity is compatible with the customer's goals and investment objectives, we question whether a determination must be made that this product is "needed."

Paragraph (b)(2) of the Proposed Rule provides that, prior to recommending the purchase or exchange of a deferred variable annuity, reasonable efforts must be made to obtain, at a minimum, certain types of customer-related information. Included here is a reference to "insurance holdings." This reference is unclear and would appear to be overly broad to the extent it can be defined to include all forms of insurance coverage. Clarification is needed regarding the scope of this reference. It is unclear to us as to how this information would be necessary for purposes of making a suitability determination regarding the purchase of a deferred variable annuity.

Principal Review

Paragraph (c) of the Proposed Rule requires a registered supervisory principal to review and approve a variable annuity recommendation before the application is transmitted to the insurance carrier. This represents a significant change from the NASD's initial proposal, which required principal review and approval no later than one business day following the date of execution of the contract application (which was later revised to require such review and approval within two business days following the date when the application is transmitted to the insurance carrier and then revised again to reflect the current paragraph (c) language).

While the Companies support a requirement for principal review, we are quite concerned about the potential impact of the requirement that is currently being proposed. First, we have concerns regarding the system changes that would be required to facilitate the submission of applications after the completion of the principal review process and the costs associated with such system changes. The costs could be significant industry-wide; however, we have not seen any cost analysis from the NASD staff regarding this. We also have concerns regarding the timeframe within which product applications will be processed and the quality of principal reviews, given the constraints that are being put on the submission of applications to product issuers. Will the principal review process suffer, given the pressures associated with the submission of applications in a timely manner? Will applications be unduly delayed pending the principal reviews that are conducted within this proposed framework (which, often times involves sales personnel who are located in one state and principals who

are located in a different state)? Will customers be unhappy about such delays, given the impact such delays could have on product pricing? With the foregoing questions in mind, we respectfully request that the timing of principal reviews be revisited with a view towards creating a process that is workable for member firms, product issuers and their customers. Our recommendation would be to eliminate the proposed pre-approval process and simply impose a reasonableness standard regarding the timing of principal review and approval.

Conclusion

The Companies acknowledge the importance of ensuring that variable annuity sales are suitable and strongly oppose abusive sales practices with respect to such products. Notwithstanding the foregoing, however, we do not believe that the Proposed Rule is needed, given the existing regulatory regime. That regime includes Conduct Rules that (i) prescribe steps that must be taken in order to ensure that sales personnel have a sound basis for recommending a transaction and (ii) require detailed written supervisory procedures, including the review of transactions on the part of qualified supervisory principals. We would, however, be supportive of rulemaking initiatives that address more improved disclosures in product prospectuses and enhanced training requirements for registered representatives and supervisory principals.

We appreciate your consideration of our comments. Please let us know if we can provide any further assistance. If you have any questions, please contact the undersigned at (302) 453-3811.

Very truly yours,

Lance A. Reihl
President