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Barbara Z. Sweeney
Senior Vice President and Corporate Secretary
1735 K Street, NW
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Sent via E-mail

Ms. Sweeney:

Mutual of Omaha Investor Services, Inc. (MOIS) is the limited scope broker-dealer affiliate of Mutual of Omaha Insurance Company. I am writing to provide our comments regarding the proposed Conduct Rule outline in *Notice to Members 04-45*. In our opinion, the specific standards for suitability and disclosure proposed in the *Notice* are both redundant and unnecessary and represent a departure from the NASD's long standing regulatory approach of developing broad Conduct Rules and best practices and requiring members to develop procedures addressing these regulations that are specifically patterned for the member's business model. There does not appear to be any consumer benefit in the proposed Conduct Rule and some of the specific requirements, as proposed, are incompatible with our business model. Existing NASD Conduct Rules and federal securities regulations should be enforced and provide an avenue for prosecution of members and their reps who commit violations. The Conduct Rule proposed in the *Notice* should be withdrawn or significantly modified.

The proposal establishes two new requirements associated with the solicitation and sale of deferred variable annuities:

- The rep would be required to document and sign off on product suitability on several specific points.
- The broker-dealer would be required to develop a separate, brief and easy to read "risk disclosure document" that highlights several specific features of the particular transaction.

In addition, the proposal specifies the documents and information to be reviewed by the principal and specifies that approval is required within one day of application execution. The proposal also requires broker-dealers to develop written supervisory procedures and training programs designed to achieve compliance with the proposal.

NASD requested feedback on the general approach for this proposal. The proposal codifies the "best practices" previously published in *Notice to Members 99-35*. While not mandatory, the best practices were given high visibility by the NASD and members were held accountable through inspections for incorporating them into their procedures to ensure compliance with legal and regulatory requirements. Following long standing NASD practices, many broker-dealers took action to incorporate the *NtM 99-35* "best practices" into their existing procedures in a manner consistent with their business model. NASD's attempts to codify these best practices into a specific Conduct Rule five years later will have a disparate impact on MOIS and other broker-dealers who previously integrated them into their business model in consideration of their responsibilities regarding sales of variable annuities. In our opinion, the general approach of developing a Conduct Rule for a specific product does not appear justified for variable annuities. Variable annuities are complex products but do not rise to the level of options or futures. Restricting their sale to a specific class of investor also does not appear justified based on the product's inherent risk. There appear to be sufficient Conduct Rules and "best practice" guidance from the NASD in place to regulate this product if enforcement is the goal. The proposed Conduct Rule appears designed with restriction or reduction of the product as its goal.

The proposal includes the requirement for members to develop a “risk disclosure” document and have a principal review and approve the sale within one day of application execution based on suitability information disclosed by the applicant. This proposal would codify a specific appropriateness/suitability requirement for deferred variable annuities. Since Conduct Rule 2310 already requires members to have reasonable grounds for recommending any security, having a specific suitability requirement for deferred variable annuities seems redundant and creates a precedent for carving out narrowly defined specific products. The proposal includes a specific time frame for principal review which is unreasonable in its aggressiveness and is not justified in terms of customer benefit. Existing SEC rules require timely principal review of all variable product applications submitted with customer funds based upon the date received by the Office of Supervisory Jurisdiction (OSJ) where the business is accepted, not the date of application execution. The proposal does not demonstrate any additional value to the customer for imposition of the aggressive principal review beyond the current requirement for principal review at time of acceptance and is silent regarding the proper action the broker-dealer should consider if it is unable to comply with this timeframe. Based on the guidance provided by the NASD in *NtM 99-35*, *NtM 00-44*, *NtM 02-85* and other *Notices*, MOIS has developed and updated its own disclosure forms for use with all of its customers in a manner consistent with our business model. This disclosure information is general and our procedures require this information to be reviewed with the applicant at point of sale when the product prospectus is provided. Detail on product features is not included in the disclosure to avoid redundancy with the information presented in the prospectus and other point of sale materials as well as the variable contract.

The proposed Conduct Rule also requires members to develop and maintain specific, written supervisory procedures reasonably designed to achieve compliance. Requiring written supervisory procedures is a good business practice and is an inherent requirement of the NASD’s Conduct Rules. Recent NASD guidance, which has resulted in the establishment of specific templates for supervisory procedures, has lead to a development process that can be difficult to understand and cumbersome to use since the templates are not tailored to the individual member’s business model.

In conclusion, the proposal appears unnecessary because it duplicates existing general NASD Conduct Rules, addresses an issue of insufficient enforcement by creating additional procedures and applies in an overly broad manner to address a concern that has not risen to the magnitude described. The proposal also does not appear to provide sufficient benefits to the customer to justify the additional costs that would be involved with compliance. We urge the NASD to reconsider this proposal and withdraw it from consideration. Enforcement of existing Conduct and Continuing Education Rules, backed up with NASD guidance through “best practices” applied in a manner consistent with each broker-dealer’s business model, would better serve the customer’s interest and be less disruptive to NASD members who have developed forms and procedures to ensure that their deferred variable annuity sales are in compliance.

Sincerely,

Michael A. Larkin
First Vice President – Securities Compliance Officer