



January 24, 2008

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: File No. SR-FINRA-2007-028

Dear Ms. Morris:

On December 27, 2007, the Securities and Exchange Commission (the "Commission") published a notice and solicited comments on a proposed rule change to delay implementation of paragraph (c) of NASD Rule 2821, filed by Financial Industry Regulatory Authority, Inc. ("FINRA") on December 21, 2007.

This letter of comment on the proposed rule change is respectfully submitted by NAVA.¹

NASD Rule 2821, "Members' Responsibilities Regarding Deferred Variable Annuities," was approved by the Commission on September 7, 2007. The rule sets forth recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements with respect to transactions in deferred variable annuities. In Regulatory Notice 07-53, FINRA announced that the effective date of the rule was May 5, 2008.

FINRA is proposing to delay the effective date of paragraph (c) until August 4, 2008. Paragraph (c) provides in pertinent part that "[P]rior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after the customer signs the application, a registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity."

¹ NAVA is a not-for-profit organization dedicated to the growth and understanding of annuity and variable life insurance products. NAVA represents all segments of the annuity and variable life industry with over 350 member organizations, including insurance companies, banks, investment management firms, distribution firms, and industry service providers.

In the proposed rule change, FINRA notes that it believes it is prudent to give further consideration to paragraph (c) and the interpretation addressed in the Regulatory Notice to determine whether certain unintended and harmful consequences may ensue upon the currently scheduled effective date of May 5, 2008. FINRA further indicates that if it concludes that further rulemaking is warranted, it will file a separate rule change with the Commission.

NAVA and its members support the proposal to delay the effective date of paragraph (c) until at least August 4, 2008. The section regarding principal review was one of the most commented parts of the rule and was modified by FINRA on several occasions since the rule was initially proposed in 2004. Moreover, the present requirement that principal review be completed prior to transmittal and no later than seven business days after the customer has signed the application was drafted by FINRA in Amendment No. 4 to Rule 2821 which was filed with the Commission on March 5, 2007, and approved by the Commission on September 7 without solicitation of comments. Amendments 2 and 3 both would have required principal review to be completed within specified time periods after the application was sent to the insurance company. Therefore, it is appropriate for the effective date for the principal review requirements to be delayed so that the industry can engage in meaningful dialogue with FINRA and the Commission about this important matter.

In the proposed rule change, FINRA notes that a number of firms have asserted that seven business days from the time when the customer signs the application may not allow for a thorough principal review in all cases, and have asked that a different timing mechanism be used. As firms have studied the requirements of the final rule in anticipation of its effectiveness, it has become apparent that triggering the timing of principal review with reference to the customer signing the application will make it difficult, if not impossible, in many instances for the review to be completed properly or at all within the mandated time period.

In amending the principal review provision so that the time for review begins to run with the customer's signature, it appears that FINRA was of the impression that this act occurred at the same or shortly before the time the broker-dealer received the application. This is not always the case. NAVA members have indicated that many completed applications are mailed by the customer to the broker-dealer and thus may not be received by the broker-dealer until right before or even after the seven day review period expires. Under the present wording of the rule, it would appear that these applications would have to be rejected even though they may be entirely suitable and could have been thoroughly reviewed by a principal within seven business days of their receipt. It is unclear whether the customer could resign and resubmit the application or whether an entirely new application would have to be completed. In either case, the customer's desired transaction would be significantly delayed. It is also unclear what firms would have to do with client funds that were received with the application under these circumstances.²

² Regulatory Notice 07-53 makes it clear that the rule presently does not permit depositing the customer's funds in an account at the insurance company prior to completion of principal review.

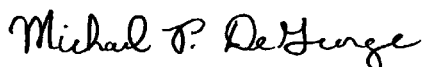
NAVA recommends that the rule be modified to require that the principal review must be completed no later than seven business days after the member receives the signed and completed application in good order.

FINRA also noted in the proposed rule change that it stated in Regulatory Notice 07-53 that the rule does not permit the depositing of a customer's funds in an account at the insurance company prior to completion of principal review. NAVA agrees with the comments of others summarized in the proposed rule change that firms should be allowed to forward customer funds to the insurance company for deposit in the insurance company's suspense account pending completion of principal review. There are sound financial control reasons why holding such funds in a suspense account at the insurance company is preferable to the holding of the funds by the broker-dealer.

Finally, the third issue discussed by FINRA in the proposed rule change is the requirement in the rule that a principal must treat all transactions as if they have been recommended for purposes of principal review. We agree that this issue as well should be given further consideration by FINRA. For certain lines of business, such as IRAs and tax-qualified plans where no recommendations are made, applications and checks may be sent by mail to a lock box. In many cases, one check is sent with respect to all investment options chosen by the customer, e.g. mutual funds, fixed annuities and variable annuities. Broker-dealers cannot hold up processing of the funds for the mutual funds or fixed annuities, products that are not subject to Rule 2821 and which do are not covered by the exemptions provided by the Commission relating to the prompt transmittal of customer checks under Rules 15c3-1 and 15c3-3 of the Securities Exchange Act of 1934. The rule does not presently provide any guidance on what firms should do with the funds in this situation.

Again, we appreciate the opportunity to comment. If we can answer any questions or be of further assistance, please contact me at (703) 707-8830, extension 20, or Richard Choi (202) 965-8127 or Karen Alvarado (319) 355-8327. Mr. Choi and Ms. Alvarado are the co-chairs of NAVA's Regulatory Affairs Committee.

Sincerely,



Michael P. DeGeorge
General Counsel