

VIA ELECTRONIC MAIL

January 25, 2008

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

RE: SEC File Number SR-FINRA-2007-040

Dear Ms. Morris:

The Financial Services Institute¹ ("FSI") welcomes FINRA's proposed delay ("Proposed Delay") of the effective date of the principal review requirements of new FINRA Rule 2821 ("Rule") which was previously approved in SR-NASD-2004-183. The Rule imposes recommendation requirements, principal review and approval requirements, supervisory procedure requirements, and training requirements tailored specifically to transactions in deferred variable annuities ("VAs"). These new requirements are scheduled to become effective on May 5, 2008. The Proposed Delay would push back implementation of the principal review requirements of the Rule until August 4, 2008 to allow FINRA additional time to consider industry concerns about the principal review timing mechanism and other provisions contained in the Rule. FSI supports the delay because it will allow FINRA time to further consider paragraph (c) of the Rule.

Background on FSI Members

The Proposed Delay is of particular interest to FSI members. The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice with little, if any, proprietary product bias.² IBD members also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as variable insurance product and mutual funds; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

¹ The Financial Services Institute was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 114 Broker-Dealer member firms that have more than 130,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 12,600 Financial Advisor members.

² Some large independent broker-dealer firms offer proprietary products such as mutual fund, variable annuity, and/or investment adviser products produced by an affiliated or parent insurance company, broker-dealer, or investment adviser. Nevertheless, these IBD firms, and their proprietary products, represent the exception to the rule.

In the U.S., approximately 110,000 independent financial advisors – or almost 20 percent of all registered representatives – practice in the IBD channel.³ These financial advisors are independent contractors, rather than employees of the IBD firms. Independent financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “Main Street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market for advisors affiliated with IBDs is clients with a net worth of \$250,000. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

FSI members agree that VA products have many features that make them complex investments. We applaud FINRA’s efforts to enhance investor protection. However, FSI members are concerned that the Rule’s current timing mechanism for principal review will result in unintended consequences for investors, financial advisors, registered principals, and broker-dealers. As a result, we support FINRA’s Proposed Delay to reconsider this aspect of the Rule.

Detailed Comments

The Rule requires a registered principal to review and determine whether he/she approves of a VA purchase or exchange “[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...”.⁵ This provision is intended to provide registered principals with a reasonable time-period in which to consider carefully the suitability of an investor’s purchase or exchange of a VA along with their subaccount allocations. Unfortunately, the realities of the VA sales process make it extremely difficult to achieve this goal within the time frame allowed.

VA products are complex investment instruments. As a result, it is common for investors to consider their investment decision thoroughly. In fact, on many occasions investors may leave their financial advisor’s office with a completed application to review, consider, and sign should they choose to invest. At other times, clients may contact their financial advisor after such a meeting to request that the completed materials be prepared and forwarded to them at their home for signature. In either case, clients may sign the completed VA application but delay in mailing it to the financial advisors office, thereby unintentionally truncating the principal review period. The result will be either an unnecessarily hurried suitability review or the rejection of a suitable application for no reason other than the date of the client’s signature.

³ Cerulli Associates, Quantitative Update: Intermediary Markets 2006. Please note that this figure represents a conservative estimate of independent financial advisors. In fact, more than 130,000 financial advisors are affiliated with FSI member firms.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

⁵ See FINRA Rule 2821(c).

The purchase of a VA product is also a paper intensive process requiring multiple client signatures, detailed personal information, and multiple forms. As a result, it is common for investors or administrative staff to overlook necessary information as they complete the application. These errors will result in a delay in processing while they are resolved; however, they may go unnoticed until after the client has signed the application. Since the client's signature starts the principal review time-period running, such an error may result in the rejection of an otherwise suitable investment simply because the date of the application falls outside the allowed principal review time period.

Simple human error may also result in the rejection of suitable VA transactions. For example, it is very common for investors to incorrectly date applications early in a new year or month. For example, a client may sign an application on January 25, 2008, but incorrectly record the year as 2007. Under the current Rule, applications containing obvious errors like this would have to be rejected even if the transaction was clearly suitable for the investor.

We believe that foreseeable errors like these should not result in the rejection of suitable VA sales thereby subjecting investors to market movement and exposing financial advisors, registered principals, and broker-dealers to resulting liability. In order to alleviate these concerns, FSI proposes that FINRA amend the Rule to change the timing mechanism of principal review from the date "the customer signs the application" to the date the reviewing principal receives a full and complete VA application for review. Specifically, we would recommend the language of 2821(c) be rewritten as follows:

(c) Principal Review and Approval

Prior 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~~ appropriate registered principal receives a full and complete application, a such registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity...

FSI believes this change to the timing mechanism for principal review will avoid foreseeable but unintended consequences for investors, financial advisors, registered principals, and broker-dealers by measuring the time period from a point at which registered principal review is possible. This change will provide registered principals with a reasonable time period in which to consider carefully the suitability of an investor's purchase or exchange of a VA along with their subaccount allocations while enhancing investor protection. As a result, we strongly support FINRA's delay in implementing 2821(c) and encourage the adoption of our proposed language.

Conclusion

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,



Dale E. Brown, CAE
President & CEO