

**RE: SR-FINRA-2008-019**

FINRA Proposal – Members’ Responsibilities Regarding Deferred Variable Annuities

GWFS Equities, Inc. (“GWFS”) respectfully submits the following comments with regard to the above referenced FINRA Proposal:

2821.(a)(1) – Application

The proposed Rule states that the Rule does not apply to deferred variable annuity transactions made in connection with any tax-qualified, employer-sponsored retirement or benefit plan that is defined as a “qualified plan” under Section 3(a)(12)(C) of the Securities Exchange Act of 1934 or meets the requirements of Internal Revenue Code Sections 403(b), 457(b), or 457(f), unless a member or person associated with a member makes recommendations to an individual plan participant ***regarding a deferred variable annuity***, in which the Rule would apply as to the individual plan participant to whom the member or person associated with the member makes such recommendation.

GWFS is a member firm whose primary business is the offering of mutual funds and group variable annuity contracts in the above referenced markets. As such, we hereby submit that Supplementary Material be added to FINRA’s Proposal to further exempt recommendations to individual plan participants of employer sponsored retirement plans, as defined above, where the recommendation is strictly related to the enrollment decision and the investment allocation among available separate account options, rather than a solicitation of the variable annuity contract itself.

Applicable scenarios for further exemption consideration are listed below:

1. With the exception of a Voluntary 403(b) plan, the solicitation of a group deferred variable annuity contract as the investment vehicle for employer sponsored retirement or benefit plans as described above is made to the Employer/Plan Sponsor and not to the Plan Participant; i.e., the annuity contract owner is the Employer/Plan Sponsor. While disclosure is made that investment options are offered through a group deferred variable annuity contract, there is no insurance component or features of the group annuity (i.e., death benefit or related mortality and fee expenses). The participants are not making a decision to purchase an annuity, but rather to (a) enroll in their Employer’s retirement plan or not and (b) allocate initial contributions among the investment options offered in the Plan. Suitability of the investment allocation of the initial enrollment is already governed by NASD Rule 2310, where a Registered Representative is involved with the solicitation or recommendation to an individual participant.

2. Employer/Plan Sponsor has entered into an exclusive contract with a retirement plan service provider to offer a Voluntary 403(b) plan where all investment options are offered through a group deferred variable annuity. While the participant is the annuity contract owner in this scenario, the participant does not have the option of electing to enroll in any other 403(b) retirement plan. As such, this scenario is similar to the employer sponsored scenario described in (1) above. As noted earlier, suitability of the investment allocation of the initial enrollment is already governed by NASD Rule 2310, if a registered representative is involved with the solicitation or recommendation of a securities product to an individual plan participant.

The intent of Rule 2821 is to ensure that the recommendation of a deferred variable annuity to an investor, as well as the investment allocations associated with the purchase of a deferred variable annuity, is suitable. For the scenarios described above, there is no recommendation to an individual participant regarding the purchase of the annuity itself, and no insurance component associated with the annuity, but rather the recommendation is limited to (a) enrollment in the Employer's retirement plan and (b) information relating to the participant's initial allocation election among investment options, currently governed by NASD Rule 2310. Therefore, we respectfully submit a request for further Supplemental Material be published to further exclude the above scenarios from applicability of the rule.

GWFS believes that Rule 2821 should only apply to an employer sponsored retirement plan when the registered representative is actually making recommendations to individual participants as currently defined in the Rule, which includes the following scenarios:

- Voluntary 403(b), as identified under Internal Revenue Code, offering all plan investment options through a group fixed and variable deferred annuity contract, *and* the Employer makes more than one service provider's 403(b) retirement plan available to its employees. In this instance, a comparison of features, charges and expenses associated with the group variable deferred annuity contract is important to ensure that the recommendation of the variable annuity over other employer sponsored retirement plan options is suitable.
- Recommendation of exchanges or rollovers from an existing employer sponsored group deferred variable annuity plan to a new employer sponsored plan where all investment options are offered through a group variable deferred annuity contract.