

VIA EMAIL

April 11, 2007

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

RE: File Number SR-NASD-2004-183, Amendment Number 4

Dear Ms. Morris:

This letter is in response to the latest version of the proposed new NASD Rule 2821 (the "Proposed Rule"), which was recently resubmitted to the SEC. Since this Rule 2821 is being resubmitted this letter will only address the proposed amendments and not the original proposed rule.

The proposed amendment requires a registered principal to review and determine whether he/she approves of a VA purchase or exchange "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 after the customer signs the application--".

We believe imposing a specific timeframe on the firm/principal places an emphasis on speed rather than on performing a diligent suitability review. The existing concerns over customer service and fear of liability associated with market movement during the review period already insure that broker-dealers are appropriately motivated to perform a prompt review. By establishing an arbitrary timetable, the NASD simply increases the recordkeeping burden on the broker-dealer without providing any demonstrable benefit to the clients. We believe the NASD should revise the Proposed Rule to require the prompt principle review of VA purchases or exchanges while allowing member firms to design appropriate systems to accomplish the review task.

Paragraph (d) of the Proposed Rule requires member firms to implement surveillance procedures to determine if the member's associated persons have completed variable annuity exchanges at a rate higher than and inconsistent with the applicable provisions of the Proposed Rule".

We object to this requirement because the information necessary to determine the rate of exchanges for a client may be unavailable because of a client's reluctance to share such information or because of legitimate privacy concerns by prior broker-dealers or insurance companies. Instead we suggest that the NASD revise the Proposed Rule to state it is the registered principal's obligation to consider prior VA and/or VA exchange information, if such information is

available, at the time of the review. In the alternative the NASD should provide clarification concerning the proposed requirements; i.e.,

What does rate of exchanges mean?

What is the relevant period for measuring the rate of exchanges?

What is the yardstick to use to compare to or determine if the rate of exchanges is high?

What if the information is not at the firm but resides with a prior firm?

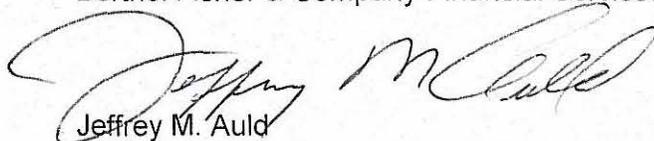
The Proposed Rule seeks to require training requirements that member firms develop training policies and programs "reasonably designed to ensure" that financial advisors and registered principals involved in the sale and supervision of VA products comply with the requirements of the Proposed Rule and understand the material features of VAs.

No matter what a firm does, even if it has the best training policies and materials, it cannot "ensure" such understanding. The NASD already has Conduct Rule 2310 which requires that a member make suitable recommendations to its clients. We see no real reason for this new rule. Instead we think it will simply create a new books and records obligation for member firms. In addition there is an existing rule relating to and which requires Firm Element Continuing Education. Each member firm could design its Firm Element Continuing Education so that it would be required for those individuals who participate in a significant number of VA transactions but for those who do not do VA transactions the continuing education could be directed at some other more relevant subject.

Finally, we are concerned that the Proposed Rule and the increased scrutiny of VAs will ultimately harm some customers by raising the barrier of access to VA products. By singling out VAs for more stringent suitability requirements, it is likely to inhibit the sale of this very important financial product. Registered Representatives may choose to offer other less suitable products because of the additional paperwork, procedures and supervisory review required by this new Rule. As a result, those customers who would benefit the most from the purchase of VAs may be unable to acquire them. We acknowledge there have been some serious abuses in the sale of VAs in the past, however we do not believe those abuses have occurred because the NASD's rules and enforcement mechanisms are not strong enough. Alternatively, in the future emphasis can and should be placed on better and more meaningful disclosure in the VA prospectuses and/or disclosure documents rather than harsher enforcement rules.

We believe additional input and consideration should be undertaken before implementation of this Proposed Rule. Thank you for your consideration.

Very truly yours,  
Berthel Fisher & Company Financial Services, Inc.

  
Jeffrey M. Auld  
President