



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-2007-040

Dear Ms. Morris:

NAVA submits this letter of comment in support of the proposed rule change filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") to delay the implementation of paragraph (c) of NASD Rule 2821 until August 4, 2008 (the "proposed rule change").<sup>1</sup>

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."

In the proposed rule change, FINRA staff expressed the belief that it would be prudent to give further consideration to that paragraph and certain interpretations set out in FINRA Regulatory Notice 07-53 "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.

FINRA proposed the rule change in light of various concerns expressed by firms, including, among others:

- that seven business days beginning from the time when the customer signs the application may not allow for a thorough principal review in all cases,

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<sup>1</sup> 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.

- that broker-dealers that do not make any recommendations to customers should not be subject to the principal review requirement, and
- that firms should be allowed to send customer funds to insurance companies for depositing in suspense accounts prior to completion of principal review.<sup>2</sup>

We respectfully submit that additional time is warranted for FINRA to further consider and take steps to address these concerns.<sup>3</sup>

Regarding the principal review requirement, as firms have studied the requirements of the final rule in anticipation of its effectiveness, it has become apparent that requiring the principal review to be completed within seven days of the date the customer signs the application will make it difficult, if not impossible, in many cases for the review to be completed properly or at all within the mandated time period. For example, NAVA members have indicated that many completed applications that are mailed by customers may not be received by the broker-dealer until shortly before or even after the seven day review period expires. Under these circumstances, a principal may have little or no time to review an application within the time constraints imposed by the Rule. The resulting rejection of applications that might otherwise have been approved if review did not have to be completed within seven business days of signature by the customer, and/or delays occasioned by requiring customers to resubmit new or revised applications with more current signatures, will needlessly frustrate the investment intent of the customers.

To ensure adequate time for principal review, NAVA recommends that paragraph (c) be revised to require principal review to be completed not later than seven business days after receipt by the firm of an application in good order.

As to non-recommended transactions, NAVA agrees with the concerns expressed regarding the requirement to treat all transactions as if they have been recommended for purposes of principal review. For certain lines of business, such as direct sales of IRAs 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 products that are not subject to Rule 2821 (such as mutual funds and fixed annuities) and that are not covered by the exemptions provided by the Commission relating to the prompt transmittal of customer checks under

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<sup>2</sup> Regulatory Notice 07-53 interprets the rule to not permit depositing the customer's funds in an account at the insurance company prior to completion of principal review.

<sup>3</sup> Amendment No. 4 to the rule provided for the first time that the period for principal review would begin when the customer signed the application, and was approved by the Commission without solicitation of comments from the industry. 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.

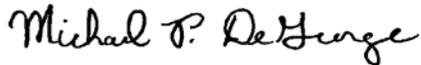
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Rules 15c3-1 and 15c3-3 of the Securities Exchange Act of 1934. The rule does not presently provide any guidance on what firms should do with the funds in this situation.

Finally, regarding the handling of customer funds, NAVA recommends that firms be allowed to forward customer funds to the relevant 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.

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 Karen Alvarado (319) 355-8327 or Richard Choi (202) 965-8127. Ms. Alvarado and Mr. Choi are the co-chairs of NAVA's Regulatory Affairs Committee.

Sincerely,

A handwritten signature in black ink that reads "Michael P. DeGeorge". The signature is written in a cursive, slightly slanted style.

Michael P. DeGeorge  
General Counsel