July 1, 2008

Florence E. Harmon, Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: File No. SR-FINRA-2008-019

Dear Ms. Harmon:

NAVA, Inc. respectfully submits this letter of comment on the proposed changes to Rule 2821 that Financial Industry Regulatory Authority, Inc. ("FINRA") filed on May 21, 2008 with the Securities and Exchange Commission ("SEC"). The SEC published a notice to solicit comments on the proposed rule change on June 4, 2008.

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.

The proposed changes are, in large measure, responsive to certain comments made by NAVA and its members, as well as other commenters. NAVA and its members support such changes, as discussed below.

Scope of Rule

NAVA and its members support the proposed changes to Rule 2821 that would limit the application of the rule to recommended purchases and exchanges of deferred variable annuities and recommended initial subaccount allocations. We appreciate FINRA's recognition of the role played by the direct sale market to provide lower-priced options to consumers who wish to purchase a deferred variable annuity contract on their own, without the involvement of a broker-dealer, as well as situations where a purchase is made through a broker-dealer but no recommendation is made.

Starting Point

NAVA and its members also support the proposed change that would modify the starting point for the seven business day review period from the date the customer signs the deferred variable annuity application to the date a member's office of supervisory

jurisdiction ("OSJ") receives a complete and correct application package ("application"). We would, however, respectfully request that this modification be revised to make clear that the starting point is the date of receipt at the office of supervisory jurisdiction ***designated by the member for receipt and processing of the application***. This clarification would avoid any unintentional starting of the seven business day period should a complete and correct application be delivered to an OSJ that does not process applications. Many broker-dealers have multiple OSJs, many of which perform limited supervisory functions that do not include principal reviews of new transactions.

Supplementary Material .03

In addition, NAVA and its members support, with the caveats described below, the interpretation set out in Supplementary Material .03 ("Interpretation") that would permit members to forward checks made payable to the insurance company or, if the member is fully subject to Exchange Act Rule 15c3-3, to transfer funds for the purchase of a deferred variable annuity to the insurance company prior to the member's principal approval of the deferred variable annuity. The Interpretation represents a reversal of the position taken by FINRA in Regulatory Notice 07-53 (Nov. 2007) that Rule 2821 does not permit the depositing of customer funds in an account at the insurance company prior to principal approval ("Notice 07-53 position"). The Interpretation is consistent with the decades-long practice by insurance companies of using "suspense" accounts to hold customer funds pending completion of the application process.

Affiliated Brokers. As written, the Interpretation does not appear to be limited to the circumstance where members are affiliated with the insurance company, whereas the Notice 07-53 position that the Interpretation reverses appeared to be so limited. If the Interpretation is not modified to address the concerns discussed below, then NAVA respectfully requests that at a minimum the Interpretation be clarified to confirm that it ***is*** limited to the circumstance where the member and the insurance company are affiliated. The general experience of NAVA's members is that unaffiliated broker-dealers do not forward customer funds prior to principal approval. In addition, compliance with the Special Account Requirement discussed below would be much more onerous if the Interpretation were not limited to that circumstance, for the reasons discussed below.

Special Account Requirement. The Interpretation is conditioned on the satisfaction of a number of proposed requirements, one of which poses ***significant concerns*** to NAVA and its members. Supplementary Material .03(2)(a) sets out a Special Account Requirement ("Special Account Requirement") under which an insurance company that receives checks or funds from a member prior to the member's principal approval would be required to:

> (a) segregate the member's customers' funds in a bank in an account equivalent to the deposit of those funds by a member into a "Special Account for the Exclusive Benefit of Customers" (set up as described in SEA Rules 15c3-3(k)(2)(i) and 15c3-3(f)) to ensure that the customers'

> funds will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of the member, insurance company, or bank where the insurance company deposits such funds or any creditor thereof or person claiming through them and hold those funds either as cash or any instrument that a broker or dealer may deposit in its Special Reserve Account for the Exclusive Benefit of Customers.

The Special Account Requirement would appear to require the segregation by the insurance company of customer funds for ***each*** member firm with which the insurance company does business. Such a result would present an administrative nightmare for insurance companies that do business with multiple unaffiliated member firms. Among other things, separate processes would have to be developed, implemented, and maintained for ***each*** Separate Account for ***each*** member firm.

The Special Account Requirement requires that the Special Account be free from claims of the ***insurance company*** as well as the ***member***. One would expect, however, than an insurance company would ***necessarily have a claim for payment*** if an application is approved and a contract issued, while the member would ***necessarily have a claim for return of the funds*** if the application is not approved and a contract is not issued. Accordingly, we do not follow this aspect of the Special Account Requirement and believe it is incongruent with the requirements of Rule 15c3-3(f) on which the Requirement appears to have been modeled.

In addition, the "claims free" language of the Special Account Requirement would appear to require the member ***and*** the insurance company to agree to ***"ensure"*** that the customers' funds in the Special Account are free from claims of the insurance company, member, or bank or creditors claiming through them. This language appears to derive, in part, from Rule 15c3-3(f), but the use of the word "ensure," which is absent from 15c3-3(f), is particularly troubling given the absence of any authority cited by FINRA for the proposition that such a ***"claims free"*** result would obtain under applicable laws and regulations, including state insurance laws and regulations governing the treatment of assets held by an insurance company. NAVA and its members respectfully recommend further consideration by FINRA and the SEC of such laws and regulations in this regard. Adoption of the Special Account Requirement without such an assessment may result in insurance companies incurring significant costs without the achievement of the sought after protection of investors.

At a minimum, the language in the Special Account Requirement starting with the words "to ensure" through the word "them" should be stricken to avoid this result, and to be consistent with the language in Rule 15c3-3(f). The "to ensure" language goes beyond the terms of Rule 15c3-3(f) which, in this regard, only require that the Special Accounts not be subject to claims in favor of the bank or any person claiming through the bank.

Furthermore, several of our members have informed NAVA that the administrative and operational impracticality of the Special Account Requirement is such that it effectively

forecloses the possibility of reliance on the Interpretation. As a result, the Special Account Requirement could unfairly and inappropriately confer to a few large insurance companies that are able or willing to bear the significant costs and administrative burdens of compliance a competitive advantage in courting member firms to do business with them. At the same time, other large insurance company members have informed NAVA that the nature and volume of their business is such that the costs and burdens of compliance with the Special Account Requirement could be prohibitive. They have indicated that a significant investment of time and effort, including modifications to existing cashiering systems and current broker-dealer procedures, would be required. These modifications would impose significant costs and require a lengthy period of time to implement, possibly as long as one year or more.

Another member of NAVA has advised that while it could not comply with the Special Account Requirement, it may be willing to comply with a "reserve" account of the type specified in Exchange Act Rule 15c3-3(e). Under this option, the broker-dealer and insurance company could agree that the insurance company would maintain a deposit in a Reserve Bank Account in an amount at least equal to the periodically calculated amount of net customer liabilities for those deferred variable annuity contracts pending principal approval. Such an option, if deemed appropriate by FINRA, should be viewed as an acceptable, but not exclusive, alternative since other NAVA members have stated that such a reserve account is simply not a feasible option for them.

Given the foregoing, NAVA and its members question whether any potential benefits of the Special Account Requirement, which benefits have yet to be established, would justify their potential cost.

Recommendation

NAVA and its members respectfully recommend that the Interpretation proceed without the Special Account Requirement, but at least pending further consideration of its merits and resolutions of some of the concerns, including any under state insurance laws and regulations, discussed above. In the meantime, FINRA and the variable annuity industry could gain experience with the implementation of the Interpretation and continue their existing use of suspense accounts, while possibly exploring the feasibility of alternative accounts that may be susceptible to broader industry adoption than the Special Account.

Given the decades of successful experience by NAVA members in processing billions of dollars of initial premium payments, NAVA and its members respectfully submit that the public interest would be better served by this recommendation than by any hurried adoption of the Special Account Requirement as proposed.

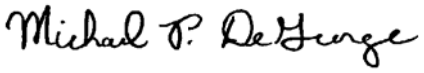
Additional Questions

Supplementary Material .03 also would require that a broker-dealer forwarding customer funds to the insurance company "disclose to the customer the proposed transfer …of the

funds." We respectfully request that FINRA provide guidance as to the nature of such disclosure.

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 of Jorden Burt LLP at (202) 965-8127. Mr. Choi is a co-chair of NAVA's Regulatory Affairs Committee.

Sincerely,



Michael P. DeGeorge
General Counsel