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June 30, 2008

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-9303

Re: FINRA Proposed Rule Change to Amend Certain Provisions of Rule 2821
(File No. SR-FINRA-2008-019)

Dear Ms. Harmon:

Vanguard¹ supports the proposed amendments to certain provisions of Rule 2821 and appreciates FINRA's willingness to consider changes to the Rule in response to public comments. We especially endorse the proposal to limit application of the Rule to "recommended transactions." We believe this change is entirely consistent with investor protection and the purposes of Rule 2821.

Under the previous version of Rule 2821(c), a registered principal was required to perform a suitability review and approve every purchase or exchange of a deferred variable annuity prior to submitting a customer's application to the issuing insurance company. More importantly, the principal, in performing the suitability review, was to "treat[] all transactions as if they have been recommended." The application of the principal review requirements of the Rule to firms that never provide recommendations with respect to deferred variable annuities concerned Vanguard and others.

¹ The Vanguard Group, Inc. ("Vanguard") offers a wide array of mutual funds and other financial products and services to individual and institutional investors. Vanguard Marketing Corporation ("VMC"), a wholly owned subsidiary of Vanguard, is a registered broker-dealer and member of FINRA. VMC is the distributor of the Vanguard family of funds and is also the distributor of the Vanguard Variable Annuity. Unless the context otherwise requires, all references to "Vanguard" refer to Vanguard and VMC.

For the reasons stated in our previous comment letter on this matter,² we support FINRA's modification that limits the Rule's application to recommended transactions. Vanguard believes that FINRA's proposed amendment is consistent with existing rules and obligations and will not detract from the effectiveness of the Rule in protecting investors with respect to deferred variable annuities. The "suitability" of a particular transaction, by definition, is a concept that only applies to recommendations.³ Imposing a "suitability" obligation on firms that never provide recommendations would have marked a significant expansion of the substantive standards governing the conduct of member firms and was never the purpose of Rule 2821.

FINRA had indicated that the previous version of the Rule was drafted to address FINRA's troubling observation that certain associated persons misrepresent recommended transactions as "non-recommended" in an effort to avoid any supervisory review of their conduct. Vanguard shares this concern and agrees that the proposal, as modified, will effectively address it.

We appreciate FINRA's willingness to reconsider the Rule in light of the additional information regarding the variable annuity market provided to the public record. Vanguard supports the proposed amendments to the Rule and believes the amended rule is a more effective means of protecting investors in deferred variable annuities. Please do not hesitate to contact me or John Bisordi, Associate Counsel at (610)-669-2624, if you have any questions or require additional information.

Sincerely,

/s/ Heidi Stam

Heidi Stam
Managing Director and
General Counsel

cc: Andrew J. Donahue, Director, Division of Investment Management
Erik R. Sirri, Director, Division of Trading and Markets
Securities and Exchange Commission

² On January 24, 2008, Vanguard submitted a comment letter in support of SR-FINRA-2007-040 which was a proposal to delay the effective date of certain provisions of Rule 2821 as written at the time. In that letter, Vanguard set forth its view that the principal review requirements of the Rule should not apply to firms that do not make recommendations to customers regarding deferred variable annuities. The letter also described Vanguard's deferred variable annuity business, the policies behind the principal review requirements of Rule 2821 and the unintended and harmful consequences Vanguard foresaw if the principal review requirements were applied to firms that do not make recommendations.

³ See FINRA Rule 2310, *Recommendations to Customers (Suitability)*.

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of General Counsel
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