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Via Electronic Filing

Florence E. Harmon
Acting Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**RE: Release No. 34-57920; File No. SR-FINRA-2008-019
Proposed Rule Change Relating to Sales Practice Standards and Supervisory
Requirements for Transactions in Deferred Variable Annuities**

Dear Ms. Harmon:

Thank you for the opportunity to comment on the Rule Proposal (the "Rule Proposal") of the Financial Industry Regulatory Authority ("FINRA") Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities. The Cornell Securities Law Clinic (the "Clinic") is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. See <http://securities.lawschool.cornell.edu>.

The Rule Proposal seeks to amend NASD Rule 2821 regarding sales practice standards and supervisory requirements for transactions in deferred variable annuities. The Clinic opposes the Rule Proposal to the extent the Rule Proposal weakens supervisory requirements for transactions in variable annuities by limiting supervisory reviews under Rule 2821 to "recommended" transactions.

As FINRA recognizes in the Rule Proposal, NASD Rule 2821(c) as originally proposed requires principals to treat "all transactions as if they have been recommended for purposes of this principal review." This requirement makes perfect sense. Variable annuities have been singled out by federal and state regulators due to abusive sales tactics driven by high commissions, among other things. Variable annuities are extremely complex products which have numerous negative consequences which are not readily recognizable to investors (e.g., high expense ratios, surrender charges, and negative tax and estate consequences). See, e.g., "Variable Annuities: Beyond the Hard Sell," <http://www.finra.org/InvestorInformation/InvestorAlerts/AnnuitiesandInsurance/VariableAnnuitiesBeyondtheHardSell/p005976>. In short, Rule 2821(c) correctly recognizes (i)

that variable annuities rarely, if ever, are sold absent some form of recommendation, be it in-person solicitation or written/on-line marketing material, and (ii) warrant special scrutiny by member firm supervisors beyond the general suitability rule (NASD Rule 2310).

Given the well-documented problems with sales of variable annuities, why attempt to fix a Rule which is not broken? FINRA seeks to justify the Rule Proposal by noting that some commentators have complained that the current Rule may inhibit lower-cost variable annuity providers from offering products. (Rule Proposal at 9-10) Yet FINRA cites no evidence to back up this assertion. Investment companies such as Fidelity and Vanguard, among others, already offer lower cost alternatives to broker-sold variable annuities, so the current Rule has not impeded competition. Moreover, even if there were to be some caution for lower-cost providers entering the market, such caution is necessary given the extraordinary problems which have accompanied variable annuity sales practices and the inherent problems with the product.

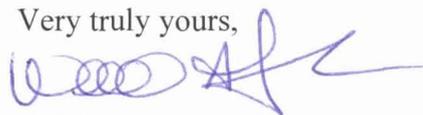
The argument that “a customer should be completely free to invest in a deferred variable annuity without interference or second guessing from a broker dealer” (Rule Proposal at 9) makes no sense. It is certainly strange for FINRA to consider supervision to be “interference” by a member firm. To the contrary, member firm supervision is the heart of the self-regulatory system. In any event, even lower-cost providers of variable annuities provide marketing materials to potential investors, making it unlikely that an investor would make a purchase without some form of recommendation. *E.g.*, Fidelity Personal Retirement Annuity, <http://personal.fidelity.com/products/annuities/?bar=c>.

FINRA also argues that it seeks to harmonize NASD Rule 2821 with the recommendation requirement of NASD Rule 2310. Harmony among rules only makes sense when the harmony is justified. Harmony for harmony’s sake raises form over substance. As discussed above, there are very good reasons to subject variable annuities to greater, not lesser, scrutiny. FINRA points to no changes in the nature or marketing of variable annuities which would justify harmonizing the rules to require less supervision of variable annuities than under Rule 2821(c).

Conclusion

The Clinic opposes that part of the Rule Proposal as seeks to impose a “recommendation” requirement on the obligation of member firms to supervise sales of variable annuities.

Very truly yours,



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