

VIA ELECTRONIC MAIL

July 1, 2008

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

RE: File Number SR-FINRA-2008-019

Dear Ms. Harmon:

On June 4, the Financial Industry Regulatory Authority, Inc. (FINRA) filed with the Securities and Exchange Commission (SEC) a proposed amendment to recently adopted Rule 2821 (Proposed Amendment).¹ The Proposed Amendment addresses three key concerns raised by broker-dealer firms after the adoption of Rule 2821 (Rule). First, the Proposed Amendment would alter the Rule to apply only to recommended purchases, exchanges, and initial subaccount allocations of deferred variable annuities (VAs). Second, the Proposed Amendment modifies the triggering mechanism of the seven-business-day period for principal review so that it would begin to run from the date the broker-dealer's office of supervisory jurisdiction (OSJ) receives a complete and correct copy of the variable annuity application. Third, the Proposed Amendment would add Supplementary Materials intended to provide guidance on certain issues related to the implementation of the Rule, including the holding of funds during the principal review process and the use of insurance company suspense accounts.

The Financial Services Institute² (FSI) commends FINRA for offering the Proposed Amendment. We are particularly interested in the proposal to amend the principal review period's triggering mechanism. FSI members are concerned that the Rule's current timing mechanism for principal review will result in unintended consequences for investors, financial advisors, registered principals, and broker-dealers. As a result, we support FINRA's Proposed Amendment as an important effort to promote greater efficiency while maintaining important investor protections.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American consumers for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD members also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products, by "check and application"; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment advisor firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial

¹ See the proposing release at <http://edocket.access.gpo.gov/2008/pdf/E8-12948.pdf>.

² The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 118 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 12,500 Financial Advisor members.

advisors are especially well positioned to provide middle class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 98,000 independent financial advisors – or approximately 42.3% percent of all practicing registered representatives – operate in the IBD channel.³ These financial advisors are self-employed independent contractors, rather than employees of the IBD firms. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisors affiliated with IBDs is clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisors. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisors play in helping Americans plan for and achieve their financial goals. FSI’s primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI’s advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

FSI supports FINRA’s Proposed Amendment to modify the starting point for the seven-business-day principal review period for VA purchases, exchanges, and initial subaccount allocations. Currently the Rule requires a registered principal to review and determine whether he or she approves of a VA transaction “[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...”⁵ This provision is intended to provide registered principals with a reasonable time period in which to consider carefully the suitability of an investor’s purchase or exchange of a VA along with their subaccount allocations. Unfortunately, the realities of the VA sales process make it extremely difficult to achieve this goal within the time frame allowed.

VA products are complex investment instruments. As a result, it is common for investors to consider their investment decision thoroughly. In fact, on many occasions investors may leave their financial advisor’s office with a completed application to review, consider, and sign should they choose to invest. At other times, clients may contact their financial advisor after such a

³ Cerulli Associates Quantitative Update: Advisor Metrics 2007, Exhibit 2.04. Please note that this figure represents a subset of independent contractor financial advisors. In fact, more than 138,000 financial advisors are affiliated with FSI member firms. Cerulli Associates categorizes the majority of these additional advisors as part of the bank or insurance channel.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

⁵ See FINRA Rule 2821(c).

meeting to request that the completed materials be prepared and forwarded to them at their home for signature. In either case, clients are likely to sign the completed VA application but may delay mailing it to the financial advisor's office, thereby unintentionally truncating the principal review period. The result will be either an unnecessarily hurried suitability review or the rejection of a suitable application simply because the date of the client's signature falls outside the allowed period.

The purchase of a VA product is also a paper-intensive process requiring multiple client signatures, detailed personal information, and multiple forms. As a result, it is common for investors or administrative staff to fail to provide necessary information as they complete the application. These errors either result in a delay in processing while the missing information is obtained or go unnoticed until after the client has signed the application. Since the client's signature starts the principal review time period running, such an error may result in the rejection of an otherwise suitable investment simply because the date of the application falls outside the allowed principal review time period.

Simple human error may also result in the rejection of suitable VA transactions. It is very common for investors to date applications incorrectly early in a New Year or after the start of a new month. For example, a client may sign an application on January 25, 2008, but incorrectly record the year as 2007. Under the current Rule, applications containing obvious errors like this would have to be rejected even if the transaction was clearly suitable for the investor.

FSI believes that foreseeable errors like these should not result in the rejection of suitable VA sales thereby subjecting investors to market fluctuations and financial advisors, registered principals, and broker-dealers to resulting liability. FSI believes the proposed change to the timing mechanism for principal review will provide registered principals with a reasonable time period in which to consider carefully the suitability of an investor's purchase or exchange of a VA along with their subaccount allocations thereby enhancing investor protection. Therefore, FSI strongly supports FINRA's proposal to change the timing mechanism of principal review.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to achieve further efficiency while maintaining investor protection.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,



Dale E. Brown, CAE
President & CEO