James A. Woodman, ACS, FLMI
[redacted]

December 30, 2009

VIA ELECTRONIC MAIL

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

Re: File No. SR-FINRA-2009-070
Notice of Filing of Proposed Rule Change to Adopt NASD Interpretive Material 2210-2 into the Consolidated FINRA Rulebook as FINRA Rule 2211

Dear Ms. Harmon:

I am writing this letter in response to the publication of *Notice of Filing of Proposed Rule Change to Adopt NASD Interpretive Material 2210-2 into the Consolidated FINRA Rulebook as FINRA Rule 2211* (the "Proposal Notice"), issued by the U.S. Securities and Exchange Commission (the "SEC"). The Proposal Notice proposes to adopt FINRA Rule 2211 (the "Proposed Rule") and to delete NASD Interpretive Material 2210-2 ("IM 2210-2") (together, the "Proposal"). While I am currently employed by a FINRA member firm, these comments are my own personal thoughts, and do not necessarily represent those of my employer. I appreciate this opportunity to comment on the Proposal.

I would first like to note that overall, I support the Proposal. However, this letter provides comments with respect to certain provisions of the Proposal relating to variable life insurance contracts which I feel are in need of clarification or change.

In particular, this letter first provides comments on the Proposed Rule's definitions of terms used. I then provide comments on the Proposed Rule's requirements for rates of return used in an illustration.

Definitions

Paragraph (a) of the Proposed Rule provides definitions of a number of terms used. However, while the term "illustration" appears frequently throughout the Proposed Rule, it is not actually defined anywhere within the Proposed Rule. In order to clarify the scope of the portions of the Proposed Rule that pertain to illustrations, I would like to suggest that "illustration" be defined as, "a presentation or depiction that includes non-guaranteed elements of a variable insurance product over a period of years and that is used in the sale of a product."

Illustrated Gross Annual Rates of Return

Paragraph (g)(7)(a) of the Proposed Rule sets a maximum of 10% for the illustrated gross annual rate of return. My only comment on this is to emphatically support this. I think 10% is an entirely reasonable maximum for the illustrated rate of return for a variable insurance product.

Paragraph (g)(7)(b) of the Proposed Rule requires that if an illustration shows an assumed negative gross annual rate of return, then it must also show a positive gross annual rate of return between 5% and 10% within the same illustration. If feel that this requirement is not necessary. After nearly 20 years in the life insurance industry, I have seen very few illustrations of variable insurance products that show a negative rate of return. When I have seen them, they were generated based on a request from the client, and not because a producer wanted to show the strength of a guarantee to the client. Clients will normally have already seen an illustration showing a positive rate of return.

Paragraph (g)(7)(c) of the Proposed Rule allows illustrations to use rates of return that match the rates of return for a broad-based securities market index. While I support the spirit of this, I have concerns about how the Proposed Rule is currently written, and I fear that it will not work as intended in practice.

My first concern with this is that illustrations of variable life insurance products can show up to 121 years of values. Most broad-based securities market indices have not been in existence for that long, so there needs to be a common understanding of what should be illustrated for the gross annual rate of return in the years beyond when the broad-based securities market index has existed. Also, since a stated purpose for allowing illustrations based on broad-based securities indices is to allow a consumer to compare products across multiple member firms, more definition will be necessary. Otherwise, each member firm will be able to implement something a little different, and the comparisons will not be possible. I would like to recommend that the Rule be modified to state that the broad-based index performance should use a period of 20 years, and if the illustration shows more than 20 years, the same 20-year cycle of returns be repeated as needed to the end of the illustration. The 20-year time period should be for the previous 20 complete calendar years, and the same time period should be shown in the prospectus of at least one underlying investment option. Another possibility is to define this as a 20-year period of returns that match the broad-based securities market index, and then a level assumed rate of return up to 10% after that.

My second concern with paragraph (g)(7)(c) of the Proposed Rule is that it allows gross annual rates of return in excess of the 10% limit. The S&P 500 has increased by more than 10% in ten of the last 20 years. While recent negative performance of the market has tempered those returns, I am concerned that this will be abused in the future. Suppose, for example, that a similar rule had been in place in 1999. If a member firm showed historical results based on the previous 10 years of S&P 500 returns, they would have shown the equivalent of about 15.7%. It has been said over and over that past performance is no guarantee of future results. I believe that selling a product based on past performance is misleading, and implies that the past performance is a reasonable expectation for the future, when it clearly is not.

Because this is not well defined, I am concerned that it will be interpreted in whatever way is most favorable for the broker selling the product, and not what is in the client's best interest.

While the idea of illustrating based on actual performance of a broad-based securities market index sounds good, because of the concerns listed above, I feel that it may be better to restrict illustrations of variable annuity and life insurance contracts to use only a single rate of return, up to a maximum of 10%. That will provide a level playing field for everyone to use.

I appreciate this opportunity to comment on the Proposed Rule. Please do not hesitate to contact me with any questions or comments at 973-802-4748, or send an e-mail to [redacted]

Sincerely,

James A. Woodman, ACS, FLMI