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September 19, 2005

Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-9303

RE: File Number SR-NASD-2004-183

Dear Securities and Exchange Commission Staff:

I am Chief Compliance Officer of Lincoln Investment Planning, Inc., an NASD member broker-dealer located outside of Philadelphia, Pennsylvania which specializes in the 403(b) retirement plan marketplace in the K through 12 schools and non-profit organizations. I have been doing broker dealer compliance for over 25 years and I am personally baffled and dismayed by the NASD's latest proposed Rule 2821. I believe that most of the proposed rule is unwarranted and will only serve to turn registered representatives and principals away from offering a legitimate investment product. By establishing such separate and specific standards for review and approval of deferred variable annuities (DVAs), it will drive out good principals who have become overwhelmed with the amount of checks and balances and over-burdensome written supervisory procedures and paperwork associated with trying to help investors make sound investment decisions. I will address my major concerns with proposed Rule 2821 below.

Exclusion from proposed rule for sales of DVAs within tax qualified employer sponsored plans even if recommended by member if employer limits products that may be offered by member and its registered representatives.
Most 403(b) plans in the K-12 marketplace and in the non-profit organizations are voluntary contribution 403(b) plans, which means the employee or participant solely contributes to the plan and there is no employer match or employer contribution to the employee's plan. Since the registered representative may recommend a DVA to a participant, the proposed Rule 2821 would apply. Yet, in some schools, our registered representatives have no choice but to offer a DVA, as it is the only product for which our registered representative is approved to offer in the school, as stipulated by the school. I request that the NASD consider that if the registered representative is limited by the employer as to the *one* annuity product that may be recommended and offered to the employer's participants, then the proposed rule should not apply. I respectfully request that the NASD consider this change as there is no additional risk or review by a principal that could change the product recommendation.

Need for Education and Training
I agree with the NASD that in the past few years the DVA marketplace has changed dramatically and there are a variety of complex new DVAs being offered today. Most of what I have seen in the realm of customer complaints, which I assume is similar to that which the NASD has seen, have been claims by clients surrounding surrender fees associated with their DVA. Surrender fees have been part of the structure of a DVA for many, many years, so why the sudden rise in complaints with regard to surrender fees? I suggest that after the down market of 2000-2003, living benefit guarantees within new DVAs, such as guaranteed accumulation benefits, guaranteed income benefits and guaranteed withdrawal benefits filled a need for investors who cried out for a product that provided them protection from future market losses similar to those that they had experienced in 2000-2003. Representatives recommended, and investors accepted the recommendation to move from the traditional DVA that offered no living benefits to those that offer living benefits. More and more DVA products hit the market to meet these needs with little or no education of both registered representatives and investors. I strongly support the NASD's portion of the proposed Rule 2821 that requires specific training of registered representatives and principals as to the material features of DVAs. I further suggest that in lieu of the remainder of the proposed rule (except for Principal Approval which I will discuss later), the SEC limit its approval at this time to the education and training portion of the proposed rule.

Education of Investors

But education of registered representatives and principals is not enough. I am further concerned that throughout the proposed Rule 2821, the NASD has developed a very complex set of procedures that has the broker dealer performing introspective analysis and attempting to make decisions of what is "right" for each and every investor who purchases a DVA based on age, liquidity, net worth and even dollar amount. I strongly believe that the decision of what is appropriate for an investor can only be made *by the investor*, and when our government or even self-regulatory authority starts to require that the broker- dealer knows best, we have taken away from the investor one of the freedoms that we all have in this country – a right to choose. I agree that an investor cannot make a decision in a vacuum, and that all broker dealers have a responsibility to educate the investor as to his or her investment as part of their suitability determination. Over the past year, our broker-dealer developed a DVA Point of Sale document which is required to be completed and reviewed with the investor and signed off by the investor prior to the purchase of a DVA. This document reviews with the investor the features of an annuity, a comparison to mutual funds, the reason why the investor is purchasing the annuity, the free look period, the surrender penalty period of the annuity with its associated costs, the annual M& E costs and range of costs of the underlying sub-accounts or funds, and the annual cost of any elected living benefit options, including the age limitation and annuitization requirements of the living benefits. By requiring the registered representative to go through this form with the investor, it provides the opportunity to highlight to the investor the features and costs of the DVA with the investor. Regulators and broker-dealers should be working to instill responsibility, accountability and authority within our investors as well as our registered representatives! Regulators need to have more confidence in investors making their own decisions. I am fully supportive of additional education and training of registered representatives AND investors. Education of the investor is key to customer protection.

Long Term Investment Objective

I am also confused as to why the NASD has proposed that DVA's should only be recommended to investors who have a long-term investment objective. Is it because the surrender period is typically eight years on these products? If so, then what about the new four-year and new no-surrender period products that are on the market? What about those products that offer no surrender penalty if a withdrawal is for a nursing home need? Do these new surrender period offerings provide any safe harbor from requiring that the investor have a long-term investment objective? What if someone is terminally ill and, therefore, does not have a long-term investment objective, and is looking at a DVA for the guaranteed death benefit for a beneficiary, does this mean the broker dealer cannot offer a DVA product? Furthermore, the SEC's Books and Records rule states the broker dealer must collect "investment objective" of an *account*, not each *investment.* Is this rule now requiring that we collect and maintain yet another piece of information on the investor? I believe that the solution is to have the client indicate on the application or Point of Sale document their anticipated time horizon or holding period for the DVA investment, so that a determination may be made as to what product would be best suited for the investor. Short time horizons may be best suited for the shorter surrender period DVA products, while long time horizons may be best suited for the longer surrender period DVA products.

Age or Liquidity Needs

I am also very concerned with the section of the proposed rule that will require that broker-dealers establish firm policies with regard to the maximum age that an investor may purchase an annuity, the liquidity needs of an investor, the percentage of a customer's net worth that may be invested in a DVA, and the establishment of a maximum stated dollar amount that may be invested in a DVA. I refer back to my comments about an investor's right to choose. How does a DVA become immediately unsuitable for the elderly person who has reached an established age limit? What if he or she needs possible tax deferral, or possibly a guaranteed death benefit or possibly a guaranteed living benefit? How can anyone guess the length of time someone may live? How can even the investor know when they may need more liquidity in their life? They could lose their job, get ill or have an unforeseen accident. Who really knows when someone will need more of their assets to be liquid? With the ever increasing longevity of our society, how can anyone establish an age limit at which a DVA may or may not be suitable? You are asking every broker dealer to play God, to choose at what age a DVA product may no longer be suitable for an investor based on age. Most issuers of DVAs have already established issuance age limits as well as living benefit age limits, determined by actuaries who have determine the level of risk relative to their price structure. Why can't the broker dealer rely on the issuer to establish the age limit? I believe that it is unconstitutional to require that broker dealer needs to set age parameters for the sale of DVAs.

Product Specific Suitability Criteria
I also object to the product specific suitability criteria for DVAs. I suggest, in the alternative, that you continue to apply solely Rule 2310 and Supervision Rule 3010 and let each case be handled on a case by case basis. The product specific suitability criteria proposed are vague and unclear as to their relevancy to a suitability determination. For example:

"financial situation and needs" - what is it that we are intended to collect and analyze? Is it the financial situation for today or the financial goal of the client (i.e., retirement)?
"investment experience" - investment experience in DVAs or are you asking for all investment experience?
"investment objectives" – this contradicts the SEC's 2003 records retention rule which requires we collect investment objective at the account level and not at the investment level.
"intended use of the contract" - isn't this what the investment objective of the account would be?
"investment time horizon" - of the particular variable annuity or the entire portfolio?
"existing investment and insurance holdings" - are we now required to have documented all of the assets of an individual, even those outside of the broker dealer?
"liquidity needs" – when? - now or in the future?

I strongly recommend that the use of these vague terms will be interpreted differently by different broker-dealers and will not result in a consistent outcome.

Principal Review and Approval
Finally, I have no problem having a principal review of each and every DVA application prior to its transmission to the issuer as long as that review is limited to 1) review to ensure that this is an approved product for sale by the registered representative, 2) the Point of Sale documents have been completed and signed by both the investor and representative; and 3) the information contained in the Point of Sale document is accurate and in plain English for investors.

We have been working hard to ensure that our representatives and our investors understand the costs, risks, liquidity of the DVA and any restrictions or conditions of receiving living benefit enhancements. I am happy to provide your staff and the NASD staff with a copy of our Variable Annuity Disclosure Form should that assist you in the establishment of simplified disclosure rules with regard to the sale of DVAs. Thank you for your consideration of my comments.

Sincerely,

Deirdre B. Koerick
Vice President