September 19, 2005

Jonathan G. Katz
Secretary
United States Securities and Exchange Commission 450 Fifth Street, NW
Washington DC 20549-0609

RE: File Number SR-NASD-2004-183; NASD proposal to adopt a new Rule 2821

Dear Mr. Katz:

United Planners' Financial Services of America ("UPFSA") is a fully disclosed retail broker-dealer registered to conduct business in all domestic jurisdictions, with over 350 registered representatives offering securities through nearly 100 offices of supervisory jurisdiction. UPFSA is a subsidiary of Pacific Select Distributors, a subsidiary of Pacific Life Insurance. UPFSA is structured as a limited partnership. All UPFSA partners and representatives are financial and investment planners that provide a variety of financial services to their clients.

As the Chief Compliance Officer of UPFSA, we appreciate the opportunity to submit comments on the above referenced rule changes proposed by NASD ("the Proposed Rule") and published for comment by the Securities and Exchange Commissions ("SEC") relating to new requirements specifically tailored to deferred variable annuities ("annuities") concerning recommendations, suitability, principal review and approval, supervision and training.

We applaud the NASD's continuing effort to enhance investor protection and education. We agree that annuities have many features that make them complex investments. We also commend the NASD for setting aside the point of sale disclosure requirements and narrowing the scope from the original proposal. However, we believe a more appropriate response would have been for the NASD to reconsider the entire proposal and obtaining input from the industry rather than recommending this somewhat abbreviated but still problematic Rule. While we support the concept of adapting the existing best practices guidelines into a rule that would uniformly apply across the industry, the Proposed Rule would go further by imposing significant new burdens on broker-dealers.

Annuities are a popular investment product primarily due to an increase in the number of retirees combined with a substantial reduction in availability of corporate sponsored defined benefit retirement plans. Insurance companies, via annuity death and living benefits, provide guarantees not available in any other investment products. The growing market for annuities has created a competitive market that results in dynamic product innovation and aggressive pricing which is clearly a benefit to the investing public. It would be detrimental to investors if the Proposed Rule were approved making distribution of annuities more difficult and expensive than alternative investment products that do not offer similar benefits.

We believe there are several alternatives that would address the concerns raised in the Joint Report issued by the SEC and NASD regarding the offer and sale of variable annuities in a more effective and cost-efficient manner than the Proposed Rule. Based on the 1,000 industry comment letters in response to Notice 04-45, in which over 97% opposed the proposed changes, it would appear that we are not alone in our concerns. We would respectfully urge the NASD and the SEC to consider these preliminary steps before more costly and burdensome obligations are imposed on broker-dealers. We also strongly believe that the insurance industry must be included in the rule-making process for the outcome to truly enhance investor protection. Our specific concerns about the Proposed Rule are outlined below.

Product Specific Suitability Determinations

Paragraph (b)(2) of the Proposed Rule provides that a member must make reasonable efforts to obtain certain product specific suitability information about the customer prior to recommending a deferred variable annuity purchase or exchange. We feel this would create an unfair competitive environment for a product line that provides great value to the public. The NASD has included a specific list of suitability factors to be considered with respect to annuity transactions. These factors are not unique to annuities, but should be considered when designing any investment portfolio whether or not it includes annuities.

We are concerned by the fact that the NASD believes it is necessary to establish suitability criteria in furtherance of the requirements contained in its general suitability rule (Rule 2310) directed only at deferred variable annuities. The only other product specific suitability test imposed by the NASD outside Rule 2310 applies to options, currency warrants, index warrants and securities futures (see Rules 2860 and 2865). The suitability standards for securities futures described in Rule 2865 are not as onerous as those proposed by the NASD for deferred variable annuities. The establishment of a new suitability rule for deferred variable annuities is unwarranted. If Rule 2310 provides satisfactory suitability standards for all other products except the volatile, high-risk products mentioned above, it should be appropriate for determining the suitability of annuities. If the NASD believes that additional product-specific suitability criteria should be applied to annuities, it should develop those criteria through discussions with manufacturers and distributors of these products. It should ensure that the criteria are clear and can be applied uniformly, and include the product specific criteria by amending Rule 2310.

Time Horizon

Paragraph (b)(1) of the Proposed Rule provides that a broker-dealer may not recommend the purchase, sale, or exchange of a deferred variable annuity unless it has a reasonable basis to believe, among other things, that the customer has a “long-term investment objective.” This language would permit the NASD to take the position that it is unsuitable to recommend a deferred variable annuity to any customer who meets all of the other suitability criteria except that he/she does not have a long-term investment objective. We believe that time horizon should be only one factor in determining suitability and it should be

measured on a case by case basis in light of the deferred variable annuity's features and the customer's other investment objectives and needs. We cannot think of any other product with respect to which either the SEC or NASD has taken such a one dimensional approach to suitability determination.
As such, we believe the NASD should include time horizon as one of the suitability criteria listed in Paragraph (b)(2) of the Proposed Rule. Alternatively, if the NASD does intend for time horizon alone to be the determinate of whether a recommendation can be made, the NASD must define what it means by "long-term investment objective" so that broker-dealers will have a clear standard to apply to deferred variable annuity transactions. Because of the different features and benefits of annuities, not all would require a customer to have a long-term time horizon.

Principal Review

Paragraphs (c) and (d) of the Proposed Rule would require broker-dealers to establish certain specific suitability standards to be applied in connection with their supervisory review. For example, paragraph (c) provides that a principal shall consider, in their review of a specific transaction, the appropriateness of a sale: (1) to a customer over a certain age; and (2) where the amount being invested exceeds a stated percentage of the customer's net worth or is more than a stated dollar amount. In each case, the member must establish its standards for "certain age", "stated percentage" and the "stated dollar amount." We are very concerned that these standards are not defined or specified in the Proposed Rule and, therefore, our representatives and supervisors will be second guessed when they attempt to do what they believe is reasonable based on the individual client's circumstances. The Proposed Rule, if implemented in its current form, would require that variable annuity business be processed and supervised differently than any other product line, resulting in inefficiency, increased costs and potentially serious erosion of existing compliance and supervisory systems to firms.

The Proposed Rule would also require a supervising principal ("Supervisor") literally duplicate the Representative's role with respect to every single variable annuity transaction. This is clearly overreaching and creates an unfair exposure to personal civil liability for the Supervisor. A duplication of the Representative's role would require that a Supervisor have detailed personal knowledge of the customer and sign off on a detailed suitability summary. In the case of an annuity transaction involving a 1035 exchange, the supervisor would be required to personally review a detailed comparison of the old and new contracts. In some circumstances, depending on the old product, that information may no longer be available due to contracts lost as well as mergers, acquisitions or a proprietary product.

A Firm providing access to a large number of variable contracts would be forced to allocate two to three times the supervisory staff for annuity transactions than for any other product line. Such requirements would result in a substantial diversion of supervisory resources from other important duties and create an unfair financial penalty on any firm that engages in annuity business.

The Proposal's requirement that a Supervisor duplicate the Representative's role in determining suitability of each annuity transaction also creates an unfair burden on firms with diverse product lines. For example, a Firm that wants to provide maximum flexibility for Representatives and their clients would typically maintain selling agreements with a majority of the 100-plus life insurance companies offering annuities. Those agreements would likely encompass a universe of over 400 annuity products. Each individual Representative would normally select a small number of such products that fit their typical client. However, in the aggregate, the Representatives affiliated with a Firm might have occasion to recommend any one of the 400 annuity products at one time or another. If the Proposed Rule were implemented in its current form, the Supervisors of the Firm would have to be familiar in detail with all those products on a moments notice.

Meeting the Proposed Rule requirement that annuity applications be held by the firm until a Supervisor reviews and approves each transaction would be unfair to annuity investors, who have as much right as anyone else to timely execution. There is potentially substantial liability to Representatives, Supervisors and Firms due to market value changes during such delays in submitting applications. In the context of most investment accounts holding back customer funds would subject a Firm and/or a Representative to severe penalties. Annuities are unique in that there is a sufficient time frame once an application is submitted for a supervisor to be able to rescind the transaction if necessary, without loss to the client. Once the contract has been delivered, there is also a minimum 10-day free look period in which the client is able to opt out of the contract.

While we believe the Proposed Rule as proposed should be rejected by the SEC, we also recognize that there have been abuses in the sale and exchanges of annuities. We have several suggestions that may prove a more effective way to address these issues:

The NASD in its arguments supporting the Proposed Rule emphasizes that many firms have not followed the "best practices" guidelines previously issued by the NASD, primarily in Notice to Members 99-35. It is this fact that leads the NASD to the conclusion that such "best practices" should be included in the Rules. It is important to note that while the NASD issued certain Investor Alerts and Regulatory Alerts relating to annuities since 1999, no further comprehensive advisory has been issued updating (or reminding) firms of their obligations in the sale of annuities for over five years. During that time there has been significant annuity product innovation, the sale of annuities has grown exponentially, the NASD and other regulators have participated in several "variable sweep exams" and considerable research has been done, resulting in the long-anticipated Joint Report published by the SEC and NASD in mid-2004.
It would have seemed reasonable for the NASD to take this opportunity to update the "best practices" guidelines and re-emphasize the regulatory liability that has resulted where firms failed to adopt reasonable sales practices and supervisory oversight for annuity transactions. We believe issuance of an "updated 99-35" would encourage member firms, a majority of which are well-intentioned, to voluntarily make further improvements in supervision of variable annuity sales practices. That would be a more reasonable approach than Rule 2821 which, if enacted in its present form, would impose an inflexible and

expensive framework that will negatively impact all Firms whether they were responding to regulatory guidance in good faith or not.

Paragraph (e) of the Proposed Rule requires members to develop and document training policies and programs designed to ensure that associated persons who sell and supervise deferred variable annuities understand the general material features of the products, including liquidity issues, sales charges, fees, and market risks. These are complex products, their features and internal costs vary widely. While we believe this is covered in the Firm Element Continuing Education Program, we do support the NASD reminding firms of their obligations in this area. Additionally, we would recommend that the NASD staff work with industry members to create appropriate training tools and programs.

We support the addition of a "plain English" summary discussion of product features and risks at the beginning of the prospectus that link to a more detailed discussion of each item in the body of the prospectus. We believe that a "plain English" summary of risks and features combined with a Q&A that covers commonly misunderstood or confusing issues would encourage customers to read at least those portions of the prospectus that are most meaningful to their investment decision. To ensure accuracy, this information must be supplied by the product sponsor- not the broker-dealers.

We believe that any sales practice, suitability and supervisory issues relating to annuities can be addressed by enforcing existing rules. However, if regulators insist that annuity transactions must be singled out for special treatment, we believe the model already in existence for Options makes more sense than the special supervision systems that would be imposed by the Proposed Rule. A requirement that any investment account has to be pre-approved by a Supervisor before any annuity transaction can be solicited would require Firms to have a special focus on suitability factors relating to annuities without massive duplication and elaborate systems changes.

We strongly suggest that an Annuity Task Force be established with full participation by both industry and regulators to fully explore sales practice, pricing, suitability, supervision and other regulatory concerns relating to annuities. As the NASD points out, modern annuities are complex, hybrid products that combine both investment and insurance attributes. It is our perception that securities regulators are not as knowledgeable about annuity structure, pricing, distribution, etc. as they are about other investment vehicles. Further, issues relating to annuities are complicated by a unique blending of state and federal regulatory responsibility and the direct competition between registered and non-registered annuity products. We believe an Annuity Task Force could greatly assist regulators in finding practical solutions to any outstanding regulatory issues related to the distribution and sale of annuities.

The NASD has determined that the costs and the complexities of these products may outweigh the benefits they can provide to customers under any set of circumstances. We disagree. We believe that training and education of representatives and supervisors and enhanced disclosures to customers will ultimately eliminate most sales practice abuses. We are concerned that Proposed Rule 2821 could have substantial unintended consequences. The changes could ultimately harm customers by making deferred variable annuities less available to those who need them as

legitimate tax-deferred savings and estate and retirement planning tools for the preservation of principal in the event of death.
In conclusion, we believe the SEC should reject Rule 2821 as presented. We believe that the NASD should be asked to provide to its members an updated sales practice advisory regarding annuities transactions. Further, we believe that the NASD should continue to aggressively enforce existing NASD Rules on suitability and supervision as they relate to all investment transactions including annuities. Finally, we strongly suggest that an industry/regulatory task force be formed to address any outstanding regulatory issues relating to annuities.

Thank you again for the opportunity to comment on these issues.

Sincerely,

Julie Gebert
Vice President
Chief Compliance Officer