

PACE INVESTOR RIGHTS PROJECT

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Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-NASD-2004-183

To Whom It May Concern:

We are writing in response to the SEC's request for comments on Amendment No. 2 to NASD's Proposed Rule Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities. We are commenting on behalf of the Pace Investor Rights Project ("PIRP") in furtherance of its mission to advocate for the rights of individual investors. We appreciate this additional opportunity to comment on the amended proposal and on the importance of increasing supervision of deferred variable annuity (DVA) transactions generally.

In our previous comment letter (dated September 19, 2005), we disagreed with NASD's decision to drop from its original rule proposal the requirement that members provide to customers purchasing a DVA a current prospectus and a "plain English" risk disclosure document regardless of whether the member recommends a transaction. Instead of formulating an alternative method of written product-specific risk disclosure in the current rule filing, NASD deleted altogether the requirement of product-specific disclosure and will now only require members to disclose the risks associated with DVAs in general. Consequently, the new rule grants brokers the authority to selectively disclose and withhold crucial information pertaining to the risks of a particular DVA. By allowing brokers to maintain their role as gatekeepers of important product-specific information, NASD perpetuates the problem of asymmetric knowledge between customer and broker even though it was precisely this troubling characteristic of the broker/customer relationship that necessitated regulation in the first place.

We also urged the SEC to strengthen the rule to provide specific standards for principal review of age, liquidity needs, and the dollar amount involved on the basis that permitting firms to set their own standards would invite abuse. In our previous comment letter, we proposed that the SEC adopt a categorical framework. Instead, apparently in

response to complaints from those who sell DVAs, NASD eliminated the requirement altogether and stripped the rule of its major enforcement mechanism.

We find it difficult to comprehend NASD's decision to delete the specific requirement that members establish standards for age, liquidity need, and dollar amounts, as these factors ultimately determine whether a DVA is suitable for a particular customer. The requirement would not be merely regulatory window-dressing. NASD Rule 2310 is not sufficient in determining whether a complex financial instrument, such as a DVA, is, in fact, suitable for a particular customer. While NASD recognizes the uncontroversial proposition that DVAs are suitable only as long-term investments and are inappropriate short-term trading vehicles, the rule proposal fails to define key terms such as "age," "liquidity needs," and "income." With NASD providing only minimal guidance in the rule proposal and in other established rules, the associated person recommending the transaction must rely on his/her judgment as to whether a DVA is suitable for a particular customer based on these factors. Moreover, the registered principal will likely rubber-stamp the associated person's analysis of these factors because nothing in the rule guides the registered principal either. Thus, with a weak first and second line of defense, the SEC and NASD should not expect to see a decrease in enforcement actions against brokers who sell unsuitable DVAs to their customers.

Also, by failing to establish objective guidelines for members to follow in recommending the purchase of DVAs, NASD sends an implicit message to member firms and their associated persons that their subjective view of a "reasonable" inquiry into a customer's age, liquidity, and income will suffice to protect them from liability. The rule simply grants too much discretion to the sellers of DVAs. Only by adopting clear, objective criteria will NASD be able to deter potential violations.

Thank you for your consideration of these comments.

Respectfully submitted,

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