



ADVISORS NETWORK

By Electronic Mail

July 19, 2006

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Release No. 34-52046A; File No. SR-NASD-2004-183
Proposed NASD Conduct Rule 2821 on Deferred Variable Annuities

Dear Ms. Morris:

Thank you for the opportunity to comment on Amendment No. 2 to proposed new NASD Conduct Rule 2821 governing sales of deferred variable annuities ("Proposal"). ING Advisors Network offers this comment letter on behalf of its four retail broker-dealers.¹

At the outset, we would like to express our appreciation for the thoughtful consideration the staffs of the Commission and the NASD have given to the comments of the industry on the prior versions of the Proposal. Many of the major concerns that we have expressed in our earlier comment letters have been addressed. We believe, however, that the current Proposal continues to contain certain provisions that are vague and/or create burdens to the industry without giving meaningful investor protection. Our concerns are addressed below.

Product-specific Suitability Criteria

Paragraph (3)(b)(1)(C)

The Proposal would prohibit the recommendation of the purchase of a deferred variable annuity ("VA") unless the member has a reasonable basis to believe that the particular VA as a whole and the sub-accounts are suitable for the particular customer "based on the information required by paragraph (b)(2)" of the proposed rule. We believe that the language should be changed to state that the investment is suitable upon the basis of the facts, if any, disclosed by such customer in accordance with paragraph (b)(2).

¹ ING Advisors Network is the marketing name for a group of retail broker-dealers with a total of over 9,000 representatives. Our representatives are independent contractors and engage in the sales of general securities and packaged products.

Paragraph (b)(2) requires the member to make reasonable efforts to obtain certain information from the customer, but does not actually mandate that the information be obtained, and this makes sense. There are circumstances in which a customer, for whatever reason, does not disclose all of the information requested. Failure to have a particular piece of information should not in and of itself create a rule violation. Conforming the language to that of current Conduct Rule 2310 would be more appropriate and provide consistency across NASD and SEC rules.

Paragraph (3)(b)(2)

The Proposal would require that “prior to recommending” the purchase or exchange of a VA, the member make reasonable efforts to obtain, among other things, information concerning the customers “intended use of the deferred variable annuity.” It is unclear what is meant by “intended use” of the VA, or how that term differs from “investment objective.” We urge that the language be deleted. Further, the requirement that the information be obtained prior to making a recommendation does not make sense. The language should be changed to mirror current Rule 2310 to clarify that the information needs to be obtained during the process and not necessarily before any recommendation is made. This is particularly important in view of the broad interpretation the NASD has given to the term “recommend” in its enforcement actions.

Principal Review and Approval

We strongly urge that the two day time period for principal review of a VA transaction be eliminated. The time period appears to be arbitrary and will result in unnecessary processing delays and cancellations of transactions that are otherwise suitable. The provision does not give the flexibility needed to properly review the transactions, particularly for broker-dealers, such as ours, with Office of Supervisory Jurisdiction structures. The two day time period will either require that VA transactions be delayed until the OSJ Manager is available to review the transaction, or will provide the OSJ Manager with little or no time to follow-up with the representative or client on any concerns. We believe that a requirement that the transaction be reviewed “promptly” would sufficiently meet the regulatory concerns of NASD without imposing a prescribed time frame that may be impossible to meet.

Training

We are concerned with what appears to be a regulatory trend toward requiring training specific to new rule proposals. We are particularly concerned with any training requirement that is product specific. Presumably, in order to make a suitable recommendation, a representative must understand the product being recommended, and there are already a number of training and examination requirements in place by the NASD and the states on insurance products. The development, administration and tracking and recordkeeping of broker-dealer required training programs at the individual rule level is extremely burdensome.

In any event, no training program can “ensure” that associated persons will “understand the material features” of a variable annuity or that they will comply with a particular rule. Rather, if training is deemed to be necessary, the requirement should be that a broker-dealer develop a program “reasonably designed to achieve compliance” with a rule.

Again, we appreciate the opportunity to comment on the Proposal. Should you have any questions, please contact me at 310-257-7380.

Respectfully submitted

Kerry Cunningham
Head of Risk Management