



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

Date: August 11, 2005

Re: File Number SR-NASD-2004-183

Dear Mr. Katz,

Fintegra Financial Solutions is writing in reference to the above file number; responding to the SEC's request for comment on the NASD proposed Rule 2821 Members' Responsibilities Regarding Deferred Variable Annuities.

For your reference and convenience, Fintegra's response will follow the outline below:

- 1) Fintegra's profile and business as it relates to variable annuities
- 2) Specific elements of proposed Rule 2821 Fintegra supports
- 3) Fintegra's issue with the overall rule in general
- 4) Specific elements of proposed Rule 2821 Fintegra takes issue with

#### Fintegra's Profile and Business as it Relates to Variable Annuities

Fintegra is an independent broker-dealer registered with the SEC and member of the NASD. Fintegra has over 200 registered representatives across the country and over \$2 billion in assets under management.

Fintegra offers clients investments and variable insurance through two platforms: brokerage<sup>1</sup> and direct business (sometimes referred to as "check and app"). Products offered include: stocks, bonds, UIT's, RIET's, mutual funds, variable annuities, fixed income products, options, etc.

Fintegra's variable annuity business is conducted through its direct business channel<sup>2</sup>, as is standard in the independent brokerage industry. Fintegra has selling agreements with numerous insurance companies offering variable annuity products and variable insurance

<sup>1</sup> Fintegra is an "introducing" broker-dealer that clears through Pershing.

<sup>2</sup> Please note that Pershing is developing a system to allow clients to purchase variable annuities through their brokerage account. Once instituted, this system (developed by a company named Blue Frog), will allow the introducing broker-dealer to (i) conduct a complete and thorough suitability review of the proposed variable annuity, (ii) approve or decline the proposed variable annuity purchase (iii) all electronically through Pershing's Net Exchange Pro trading system.

makes up a proper and proportionate part of Fintegra's business. Therefore, Fintegra is submitting this comment as a knowledgeable and experienced affected party to the proposed rule.

### Specific Elements of Proposed Rule 2821 Fintegra Supports

Fintegra agrees with the NASD that some variable annuities can be complex and unfortunately, some variable annuities have been utilized in "questionable sales practices."<sup>3</sup> It is for these reasons that Fintegra is full support of section (e) of the NASD proposed rule to require training for all registered representatives that sell deferred variable annuities.

Fintegra believes it is quite obvious that a better educated and informed registered representative will be in a position to more completely and effectively educate a client on a proposed deferred variable annuity transaction. This in turn will result in clients being more informed on proposed annuity purchases and exchanges with the end result being a decrease in unsuitable, problematic or questionable sales of this product.

Fintegra is also in general agreement with the NASD with regard to requiring a memorialized suitability assessment signed by the registered representative making the proposal for the deferred variable annuity, as is required under section (c)(2) of the proposed rule.

Documenting the suitability assessment protects the registered representative against frivolous and unsubstantiated customer complaints and arbitrations. This documentation also fosters a more thorough suitability assessment which will better protect the client.

Finally, Fintegra is in full support of the rule's allowance for the utilization electronic media in meeting the compliance of the rule.<sup>4</sup> Electronic communication and documentation as utilized in the securities and insurance industry are becoming more standard every year. The NASD's understanding and acknowledgement of this industry trend via its incorporation into the proposed rule is welcomed and supported by Fintegra.

### Fintegra's Issue With the Overall Rule in General

Where Fintegra is in agreement with parts of proposed NASD Rule 2821, Fintegra questions the need and purpose of the overall rule. It is Fintegra's view that the NASD currently has sufficient rules in place to regulate the sale of variable annuities.<sup>5</sup> Therefore, Fintegra does have some concern over the apparent NASD stance on Rule 2821, which seems to imply that specific rules need to be created to regulate the suitability of specific products. If this is the case, where is the specific suitability rule for mutual funds? For REIT's? For equity stocks? For US treasury bonds? Etc.

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<sup>3</sup> Federal Register, Vol. 70, No. 139, p. 42126

<sup>4</sup> NASD Rule (a)(2)

<sup>5</sup> Specifically, NASD Rule 2310 provides sufficient and encompassing suitability standards for all products.

It is Fintegra's belief that this rule may needlessly increase the cost of conducting deferred variable annuity business. Because broker-dealers would be required to have in place "siloed" suitability assessment programs, synergy with other future product specific suitability processes might very well be unobtainable due to the very specific and different elements of each suitability product rule. Therefore, broker-dealers would be required to incur costs associated with developing unique procedures for each and every product they effectuate.

The sale of deferred variable annuities needs to be regulated and supervised to prevent the misuse and improper sale of these products and resulting harm to the consumer. However, Fintegra believes this regulation and supervision can be effectively carried out under the current NASD rule base, therefore protecting the consumer, with very little additional cost or expense incurred to the broker-dealer.

#### Specific Elements of Proposed Rule 2821 Fintegra Takes Issue With

If NASD Rule 2821 is approved, Fintegra respectfully requests the SEC take note with several elements of the rule and eliminate them or amend them appropriately prior to the rule's approval. These points are listed below:

1) Section (b)(1)(B) of the rule requires that a client have a "long term investment objective" as a prerequisite of being offered a deferred variable annuity. Fintegra finds several problems with this requirement.

First, the rule as written would eliminate all deferred variable annuity sales to those clients with a short term investment objective regardless of all other client profile factors and specific product features. As an example, is a deferred variable annuity unsuitable for a 70 year old client that wants to invest \$70,000 of their \$700,000 liquid net worth, to utilize an enhanced death benefit on a deferred variable annuity that has no surrender charges on withdrawals? What if the same client wants to annuitize the deferred variable annuity in a year? In two years?

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Fintegra sees no harm in the above proposed transaction due to the unique client profile and the unique features of the deferred variable annuity. The NASD's stance has always been that every client is unique and each transaction needs to be reviewed and judged on its own unique merits. Fintegra follows this stance and poses the following question to the SEC: How does a broker-dealer incorporate unique client profiles and unique product differences into a *per se* unsuitable standard as set out by Rule 2821?

Therefore, Fintegra sees the proposed section (b)(1)(B) to be harmful to customers as this rule would make deferred variable annuities unavailable to those clients with a short term investment objective who could greatly benefit from them.

Finally, under section (b)(1)(B), how does the NASD define "long term"? In addition, it is Fintegra's stance that "long term" will be viewed and defined differently, client by client, and age bracket by age bracket. Client 1 will most likely define "long term"

differently than Client 2. A client who is 24 will most definitely define “long term” differently than a client who is 70.

Fintegra is not in support of section (b)(1)(B) as it is written. However, Fintegra is in full support of an amendment that would require a registered representative to obtain from and consider the client’s time frame *as a criteria* in whether to recommend a deferred variable annuity.<sup>6</sup> Time frame is an obvious consideration that should be utilized in determining if a deferred variable annuity is suitable or not for a given client. However, it should not be utilized as a *per se* limit to determine unsuitability per the discussion above.

2) Section (b)(2) requires, in part, that a registered representative must obtain, at a minimum, a client’s “financial situation and needs.” Rule 2821, does not define “financial situation and needs” and therefore, Fintegra is uncertain as to what other factors the NASD could be referring to in this requirement, as this section of the rule already requires a registered representative to obtain a client’s: age, annual income, time frame, investment experience, investment objective, intended use of the deferred variable annuity, liquidity needs, liquid net worth, risk tolerance, and tax status.

Therefore, Fintegra would request that “financial situation and needs” be further defined by the NASD or removed from the rule by the SEC.

3) Section (b)(2) also requires a registered representative to obtain the client’s “existing investments and insurance holdings” as a prerequisite to offering a deferred variable annuity. Fintegra opposes this specific requirement for two reasons.

First, Fintegra requests guidance from the SEC as how a registered representative can comply with section (b)(2) and not invoke SEC Rule 275.202(a)(11)-1 as promulgated under the Investment Advisor Act of 1940. As the SEC is aware, if a representative conducts “financial planning”, the representative needs to be registered as an investment advisor representative with an RIA.<sup>7</sup> Therefore, Fintegra respectfully requests a formal statement from the SEC that if a registered representative obtains a client’s existing investment and insurance holdings, that these actions will not be construed as conducting “financial planning” under 202(a)(11)-1 and thereby not need to be registered as an investment advisor representative.

Second, Fintegra finds issue with section (b)(2) of proposed NASD Rule 2821, because the rule is unclear as to the registered representative’s liability if the client refuses to divulge their “other investments and insurance holdings”. In addition, what if the client lies to the registered representative with regard to this required information?

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<sup>6</sup> Obtaining a client’s time frame and utilizing it in considering whether to recommend a deferred variable annuity, is required under section (b)(2) of Rule 2821.

<sup>7</sup> Where the rule states that a representative conducting or offering financial planning needs to be registered with an RIA as an investment advisor representative, the SEC fails to define what “financial planning” is. This has resulted in much confusion in the broker-dealer and RIA communities.

Due to the lack of clarity and the undefined liability of the above elements of section (b)(2), Fintegra respectfully requests that the SEC remove these referenced points or amend them so that they are not *per se* requirements in order to recommend a deferred variable annuity to a client.

4) Fintegra has issue with section (c)(1)(B) with regard to the NASD defining a deferred variable annuity as being *per se* classified as a long term investment. Please see point 1) above for Fintegra's argument on this issue.

5) Fintegra requests the SEC require the NASD to better define section (c)(1)(C). The section requires that a broker-dealer review a deferred variable annuity for suitability on the basis of the amount invested as compared to the client's net worth. Fintegra agrees that this method of review is beneficial in reviewing a deferred variable annuity transaction for suitability. However, Fintegra feels that the NASD has some % in mind and requests that the NASD state that %. The question arises: How can the NASD regulate a standard when that standard is not defined? For example, if the NASD does not want to see a client invest more than 50% of their net worth into a deferred variable annuity, then the NASD needs to state this fact.

Due to the undefined standards that section (c)(1)(C) requires in reviewing a deferred variable annuity for suitability, Fintegra believes that great harm and undue costs would be incurred by broker-dealers selling deferred variable annuities, from the NASD through sanctions and fines via an unspoken limit viewed by the NASD on net worth that the industry is unaware of.

6) Section (c)(2) requires a principal review and approve (or decline) a proposed deferred variable annuity *prior* to the deferred variable annuity application being sent to the issuing insurance company. Where Fintegra understands the basis of the requirement for approval/denial by the broker-dealer prior to the insurance company receiving the deferred variable annuity application, Fintegra requests that the SEC push back the compliance date with this specific element of Rule 2821.

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Pre-approval/denial of deferred variable annuities would most likely require transmissions from the registered representative to the broker-dealer and then, upon approval of the application, a transmission from the broker-dealer to the issuing insurance company.<sup>8</sup> However, in order to comply with section (c)(2), the most efficient way to conduct these communications/transmissions is through electronic means. However, Fintegra is aware that the majority of the industry does not utilize any type of electronic "paperless" direct business platform.<sup>9</sup>

Therefore, Fintegra requests the SEC push back the compliance date with respect to section (c)(2) to give broker-dealers the reasonable time required to assess, develop, and

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<sup>8</sup> These "transmissions" take place via US mail or overnight couriers at this time.

<sup>9</sup> Fintegra is in the beginning stages of building a "paperless" electronic direct business order processing system that will be used to comply with the pre-review element of NASD Rule 2821 section (c)(2). However, this system is still several quarters away from final completion.

incorporate electronic order flow systems to best meet and comply with NASD Rule 2821(c)(2).

7) Fintegra finds fault with section (d)(2) along the same lines as sections (b)(1)(B) and (c)(1)(B) of the rule.

8) Fintegra finds fault with section (d)(3) along the same lines as section (c)(1)(C) of the rule.

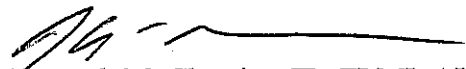
Fintegra understands the concern expressed by the NASD with regard to the unsuitable sale of some deferred variable annuities. However, Fintegra contends that a separate rule governing the sale of a specific product is counterproductive, costly to the brokerage industry and provides very little additional protection to the consumer over and above existing NASD suitability rules.

Fintegra feels that the best way to supervise and regulate the sale of deferred variable annuities is through stronger enforcement of NASD Rule 2310, required specific training for registered representatives selling deferred variable annuities, and required pre-review of proposed deferred variable annuity transactions prior to the submission of the annuity application to the issuing insurance company.

If you should have any questions to the points raised herein, please feel free to contact me at 1-800-870-7993 or [kenc@fintegra.com](mailto:kenc@fintegra.com).

I thank you for your time and consideration.

Respectfully,



Kenneth M. Cherrier, JD, FLMI, AIRC, AIAA, ACS  
Chief Compliance Officer

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