Securities Industry Association
120 Broadway - 35 Fl. • New York, NY 10271-0080 • (212) 608-1500, Fax (212) 968-0703 • www.sia.com, info@sia.com

July 19, 2006

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

Re: Release No. 34-52046A; File No. SR-NASD-2004-183

Dear Ms. Morris:

The Securities Industry Association ("SIA")[1] is pleased to submit comment on the referenced release ("Release") regarding Amendment No. 2 to proposed new NASD Rule 2821 governing deferred variable annuity sales practices and supervisory procedures ("Rule Proposal"). The SIA previously submitted comment to the SEC on September 19, 2005 regarding Amendment No.1 to the Rule Proposal following comment submitted directly to the NASD on August 4, 2004 in response to NASD Notice to Members 04-45. In addition, SIA has met with the staffs at the SEC and NASD to discuss our concerns with the prior proposals.

We appreciate the serious and thoughtful care with which the staffs have considered our concerns and believe the current proposal has addressed most of our major concerns. Notwithstanding these significant revisions, SIA believes that the Rule Proposal continues to contain certain provisions that are vague and do not meaningfully contribute to the overall objective of investor protection in recommended transactions in deferred variable annuities ("DVAs"). In addition, the Rule Proposal continues to raise concerns with respect to its principal approval requirements. Our concerns are addressed below.

[1] The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2005, the industry generated an estimated $322.4 billion in domestic revenue and an estimated $474 billion in global revenues. (More information about SIA is available at: www.sia.com.)

The language of Proposed Rule 2821(b) should be more narrowly drafted to impose realistic requirements upon registered representatives.

Proposed Rule 2821(b) contains certain provisions which impose unrealistic expectations upon registered representatives, or are not otherwise relevant to a suitability determination. For example, paragraph 2821(b)(1) (b) of the Rule Proposal requires registered representatives to have a reasonable basis that customers "would" benefit from the features of a deferred variable annuity. We believe that this language is promissory in nature and implies a level of certainty and guarantee upon the suitability determination by a registered representative that is not attainable. Therefore, we respectfully suggest that "would" be replaced by "could", which implies the possibility, not the certainty, of a benefit to the customer.

In addition, we also believe that in paragraph 2821(b)(2) registered representatives should make a reasonable effort to determine a customer's overall investment objectives (which thereby supports the requirements of (b)(1)(b) of how the client could benefit from a DVA) but not to *per se* determine the intended use of the DVA. While DVAs are complex securities, in no other instance are registered representatives required to know the intended use of a security in making a recommendation to clients. We therefore believe that this language should be deleted entirely. For these same reasons, we also respectfully request that information pertaining to a client's existing life insurance holdings also be deleted.

Principal review and approval under Proposed Rule 2821 should apply to recommended transactions only, and should be required to be completed "promptly".

SIA has serious concerns about subjecting all transactions in deferred variable annuities to principal review and approval. We believe that transactions that are not recommended by a registered representative do not raise the same supervisory concerns that recommended transactions present. Moreover, NASD Rule 3010(d) requires a registered principal to review and endorse, in writing, all securities transactions. Therefore, the requirements of paragraph 2821(c), particularly the documentation and signature of the considerations set forth in paragraph (c)(1)(A)-(D), are burdensome and do not meaningfully contribute to the review of transactions that arguably do not require tailored supervisory scrutiny. We would further add that the objectives of principal review contained in paragraph (c) could otherwise apply to non-recommended transactions as part of the procedures required by paragraph 2821(d) of the Rule Proposal. We therefore respectfully request that paragraph 2821(c) of the Rule Proposal apply only to recommended transactions in DVAs.

In addition, we would suggest that the principal review and approval be required to be performed "promptly" rather than within two business days. SIA appreciates that the NASD is seeking to ensure that timely reviews and approvals of transactions in DVAs by registered principals are conducted. However, SIA believes that supervisors should be

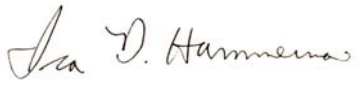
permitted the flexibility and time necessary to effectively perform such reviews and approvals within the constraints of firm processes and procedures which may not lend itself to a "time clock" of two business days. We are concerned that by applying a prescribed time period to these reviews and approvals, a number of transactions will unnecessarily be cancelled in order to meet this regulatory deadline. We agree that the Staff is appropriate to expect timely reviews and believe the word "promptly" achieves that expectation while affording firms the flexibility to conduct such reviews.

For the reasons set forth regarding paragraph 2821(b)(1) (b), we believe the language or paragraph 2821(c) that requires the principal to consider the extent to which a customer "would" benefit should be amended to "could" benefit. Moreover, we respectfully request that paragraph 2821(c)(1)(D)(iii) be deleted from the principal's suitability review and approval considerations as the nature of these considerations apply to a particular transaction under review and not to prior transactions that may have occurred. Such prior transactions may not pertain to the particular DVA contract being exchanged nor may such prior transactions necessarily have been effected in a client's account. A principal's review of a client's overall transactions in DVAs, particularly DVA exchanges, more appropriately belongs in paragraph 2821(d) as part of the supervision of the associated person effecting the exchange.

* * *

SIA appreciates the opportunity to comment upon the Rule Proposal. Once again, we want to commend the staffs at the NASD and the SEC for their careful consideration of the industry's concerns. If you have any questions or would like to discuss our comments further, you can contact the undersigned at (202) 216-2000 or Eileen Ryan at (212) 618-0508.

Very truly yours,



Ira D. Hammerman
General Counsel

cc: Mary L. Schapiro
Marc Menchel
Elisse B. Walter
Robert C. Errico