February 22, 2007

I am writing to share my concerns about Amendment No. 3 to SR-NASD-2004-183 ('Proposed Rule') filed by the NASD on November 15, 2006. The NASD is proposing to adopt this new rule, Conduct Rule 2821, to create recommendation requirements (including a suitability obligation), principal review and approval requirements, supervisory procedure requirements, and training requirements tailored specifically to transactions in deferred variable annuities ('VAs').

I have always disclosed all known features of any investment I have recommended and the known risks involved with the particular investment. VAs are a part of the product line I offer clients and aside from the "deferral" present clients opportunities to have a stable , predictable income stream at some point in the future with a possibility of greatly increased income benefit over a fixed product.

For some clients, this is the only viable way to save for their retirement. Our savings rate, in the American economy, is now negative, thanks in large part to disincentives to save. I have significant concerns about the provisions of the Proposed Rule. I urge the SEC to solicit additional comments from the industry before adopting the Proposed Rule. My concerns include the following:

1.Suitability Standard - Paragraph (b)(1)(A) of the Proposed Rule prohibits a registered representative from recommending the purchase or exchange of a VA unless he/she 'has determined that the transaction is suitable in accordance with Rule 2310.' This new language raises the bar for suitability determinations by requiring me to determine that my recommendation is suitable, rather than simply having 'reasonable grounds for believing that the recommendation is suitable' as required by Rule 2310. As a result, I believe the language in this paragraph should be amended to read as follows:

(b) Recommendation Requirements
(1) No member or person associated with a member shall recommend to any customer the purchase or exchange of a deferred variable annuity unless such member or person associated with a member has determined a reasonable basis to believe that the transaction is suitable in accordance with Rule 2310.

2.Obligation to Inform Customers of Features of VA Products - Subsection (b)(1)(A)(i) of the Proposed Rule prohibits a broker-dealer from recommending the purchase or exchange of a VA to a client unless it has a reasonable basis to believe that the client has been informed of 'various' features of VAs including specific features which are delineated in the Proposed Rule. The use of the word 'various' in this provision is ambiguous. The prior proposal required the disclosure of 'material' features of VAs. This language is preferable and should be reinserted into the Proposed Rule. 'Various' features create ambiguity where none existed before is misleading to the client.The SEC is then, on record, as, not only preferring, but requiring the client to be mislead.'Material' features are what they are.

3.Product Specific Suitability Criteria - Paragraph (b)(2) of the Proposed Rule provides that a financial advisor must make reasonable efforts to obtain certain product specific suitability information about the customer prior to recommending a VA purchase or exchange. I support the NASD's listing of specific suitability criteria necessary to support a recommendation. I am concerned that certain product specific criterion listed by the NASD is unclear or irrelevant to a suitability determination. I have the following specific concerns about the suitability criteria delineated by the rule:

.Investment Experience - NASD's inclusion of 'investment experience' as a criterion for determining suitability must be clarified. Without some specific guidance, the industry is exposed to future interpretation without precedent or notice. Further, is it the NASD's perspective that no prior investment experience renders a purchase recommendation unsuitable? And exactly how is one to ontain "investment experience"? If this is so, then sales, by banks, of all CDs should be banned because of their inherent inflation and loss of purchasuing power risk. This is not presently explained to bank clients, so they are unaware of the potential risks. Should banks expressly be examined by the NASD and the SEC for all thier activities? Isn't this an "unsuitable" practice?

.Intended Use of the Deferred Variable Annuity - I don't understand the use of the term 'intended use of the VA?'Is this different from the client's investment objective? Is estate planning or tax deferral a legitimate "intended use" or would the NASD require a more detailed analysis? I ask that the NASD expressly and completely define the meaning of "intended use" or remove it completely from the rule.
.Existing Assets - The Proposed Rule has been amended to require the financial advisor to make reasonable efforts to obtain information concerning the client's 'existing assets(including investment and life insurance holdings).' This language is, again, ambiguous in that it could potentially require representatives to obtain information about assets that have no impact on the suitability of their VA recommendation (e.g., automobiles, real estate, collectibles or jewelry owned by the customer). I suggest that the requirement be amended to obligate the representative to make reasonable efforts to obtain information concerning the client's 'investable assets.'

4.Principal Review Standard - Paragraph (c) of the Proposed Rule requires a registered principal to 'review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity.' The Proposed Rule goes on to say that 'a registered principal shall approve the transaction only if the registered principal has determined that there is a reasonable basis to believe that the transaction would be suitable' based upon the suitability criteria delineated in the recommendation requirements of the rule. This language obligates the registered principal to make a separate suitability determination thereby placing him/her in the same shoes as the financial advisor making the sale. I find this to be less than appropriate as my supervisor "does not know the client" which has always been an NASD and SEC requirement for someone making a recommendation.The supervisor is duty bound to review the recommendation(s) of the advisor and to question any item which ap pears to be "a red flag". This appears to be a significant deviation from the requirements of 3010(d)(1) which states in relevant part:

Each member shall establish procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions... Such procedures should be in writing and be designed to reasonably supervise each registered representative. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Association upon request.

As a result, I believe the language in the Proposed Rule paragraph should be amended to read as follows:

(c) .a registered principal shall consider the factors delineated in paragraph (b) of this rule in considering whether to approve or disapprove of the purchase or exchange of the deferred variable annuity.

5.Time Frame for Principal Review and Approval - The Proposed Rule requires a registered principal to review and determine whether he/she approves of a VA purchase or exchange within two business days of the date the broker-dealer transmits the client's application to the issuing insurance company. The registered principal is granted three additional business days, for a total of five business days, if it is necessary in the course of the review to contact the client or financial advisor. This limited review period seems to have been arbitrarily adopted. While I understand that the NASD believes that requiring completion of the principal review within this time frame is necessary for the protection of investors, I fail to understand how investors would be harmed if another appropriate time frame were adopted. As a result, I would suggest that the Proposed Rule be revised to require the completion of principal review within a reasonable time-period (not to exceed the expir ation of the free look period) following the date the broker-dealer transmits the VA purchase or exchange to the issuing insurance company.

6.Unintended Consequences - I believe the Proposed Rule will harm clients by raising the barriers to their access to VA products. Singling out VAs for more stringent suitability requirements is likely to inhibit the sale of this important financial product. The result may very well be that VAs become less available to those who could benefit from them as legitimate vehicles for tax-deferred savings, estate, and retirement planning. I recognize that there have been some serious abuses involving the sale and exchanges of VAs. I do not believe the sales abuses have occurred because the NASD's rules and enforcement mechanisms were not strong enough to prevent them. Therefore, I urge the NASD to place additional emphasis on the enforcement of the existing Conduct Rules. I believe that more meaningful disclosures to customers via sponsor-created prospectuses or a disclosure document suggested by the NASD's Annuity Roundtable working groups will ultimately help to eliminate mos t sales practice abuses.

The NASD also has failed to recognize that the VA products available today are significantly improved over those of just a few years ago by the living benefits that are a part of many contracts.
One of the reasons the contracts have improved is the increased diligence of the advisors in only recommending suitable products and assuring client suitability.

I strongly urge the SEC to solicit additional industry comment before adopting the Proposed Rule.

Sincerely,

Mr. James Sowell
owner
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