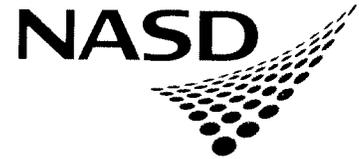


James S. Wrona
Associate Vice President
and Associate General Counsel

Direct: (202) 728-8270
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May 15, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE - 10th Floor
Washington, DC 20549-1090

RE: Proposed NASD Rule 2821 (SR-NASD-2004-183)

Dear Ms. Morris:

On May 4, 2006, NASD filed with the Securities and Exchange Commission Amendment No. 2 to proposed NASD Rule 2821 (SR-NASD-2004-183) and a response to comments, which, inter alia, summarized recent NASD examinations and enforcement actions involving variable annuities. NASD is submitting this letter to provide updated information to the Commission.

The examination statistics that NASD previously provided to the Commission covered the period of July 2004 to July 2005. More recently, during the period of August 2005 to April 2007, NASD completed 591 routine examinations involving the review of variable annuities. These examinations resulted in 47 Letters of Caution; 34 Compliance Conferences; and 4 Acceptance, Waiver, and Consent letters (AWCs), in which a respondent accepts a finding of violation, consents to the imposition of sanctions, and agrees to waive the right to a hearing.¹ While the majority of these actions continue to involve failure to establish or follow adequate written supervisory procedures, a number of actions were related to failure to obtain and maintain customer account information, material misrepresentations on customer paperwork, unsuitable recommendations, and failure to comply with standards relating to communications with the public. These findings do not include "cause" examinations, many of which result in formal action that is captured by enforcement actions, discussed below. These findings also do not include information from special examination initiatives.

¹ Thus, from July 2004 to April 2007, NASD completed a total of 807 routine examinations involving the review of variable annuities. Those examinations resulted in 92 Letters of Caution, 45 Compliance Conferences, and 4 AWCs.

With regard to enforcement actions, NASD previously summarized myriad NASD cases involving variable annuities that were resolved during the period of January 2004 to November 2005. Since that time, NASD has brought a number of additional enforcement cases involving variable annuities, including, among others, the following:

- *Phillip Nelson*, No. 2006004829701 (April 3, 2007) (providing misleading communication to customer regarding a variable annuity);
- *Victoria C. Smotherman*, No. 2006003897501 (March 21, 2007) (fraudulently inducing purchases of variable annuities);
- *Donna Vogt*, No. EAF0400730002 (Feb. 21, 2007) (making unsuitable variable annuity recommendations);
- *Raymond James Financial Services, Inc.*, No. EAF0400730001 (Jan. 31, 2007) (failing to properly supervise by permitting producing branch managers to supervise themselves and by not properly reviewing variable annuity sales and exchanges);
- *Peter F. Esposito*, No. 2005002689601 (Dec. 8, 2006) (submitting falsified account information to his firm concerning the liquidation of a variable annuity);
- *Quick & Reilly, Inc.*, No. E102003158301 (Dec. 1, 2006) (failing to supervise variable annuity sales);
- *Waddell & Reed, Inc.*, No. E062004029603 (Nov. 24, 2006) (failing to supervise sales of variable annuities where unregistered persons were selling such products);
- *David L. McFadden*, No. 2005000226001 (Nov. 15, 2006) (fraudulent and unsuitable sales of variable annuities, mutual funds, and exchange traded fund shares);
- *CCO Investment Services, Corp.*, No. E112005014002 (Oct. 16, 2006) (failing to, among other things, supervise variable annuity sales);
- *Daniel Carlos Lacey*, No. E062004000201 (Aug. 11, 2006) (making unsuitable recommendations regarding variable annuities exchanges).
- *Michael K. Maunsell*, No. 2005001939501 (Aug. 2, 2006) (making unsuitable variable annuity recommendations);
- *Carole G. Ferraro*, E0520030291 (July 21, 2006) (making unsuitable recommendations regarding variable annuities);

Nancy M. Morris

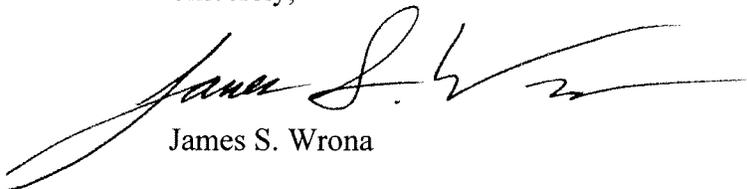
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- *Jerry Swicegood*, No. 2005002683001 (July 13, 2006) (falsifying documents related to variable annuity exchanges);
- *Eric J. Brown*, No. E112003006903 (June 27, 2006) (making unsuitable recommendations and false statements regarding variable annuities);
- *Joseph Vitetta*, No. E102004122501 (June 8, 2006) (making unsuitable recommendation regarding a variable annuity, among other violations);
- *AmSouth Investment Services, Inc.*, No. E052004025802 (May 24, 2006) (failing to establish and maintain reasonable supervisory system in connection with sales of variable annuities and mutual funds);
- *Charles Snyder*, No. E112004042001 (May 2, 2006) (making unsuitable variable annuity recommendations);
- *Frank P. Grasso*, No. EL120030533 (April 17, 2006) (falsifying customer information on variable annuity applications);
- *Tyler M. Kerrigan*, No. E0520030355 (March 10, 2006) (recommending unsuitable variable annuity transactions);
- *Angelisa Savage-Bryant*, No. E072004064201 (March 6, 2006) (misrepresentation in connection with a variable annuity exchange);
- *Brian Carr*, No. E9B2003043802 (Feb. 22, 2006) (making unsuitable variable annuity recommendations);
- *John Babiarz*, No. 2005002047301 (Feb. 10, 2006) (making unsuitable variable annuity recommendations);

If you have any questions, please contact me at 202-728-8270.

Sincerely,

A handwritten signature in black ink, appearing to read "James S. Wrona", with a long horizontal flourish extending to the right.

James S. Wrona

cc: Catherine McGuire
Lourdes Gonzalez
Dawn Jessen