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May 24, 2007

VIA E-MAIL

Ms. Nancy M. Morris
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: **File Number SR-NASD-2004-183; Amendment No. 4 to Proposed Rule Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities**

Dear Ms. Morris:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in connection with the NASD's recent filing with the Securities and Exchange Commission (the "SEC") of Amendment Number 4 to Rule 2821 ("Amendment 4").[2] This letter is a follow-up to our letter dated April 9, 2007, requesting that the SEC seek comment on the Amendment. Although, as of the date of this letter, the SEC has not requested comment on Amendment 4, the Committee offers comment in this letter regarding important interpretative and practical compliance considerations which the Committee believes must be addressed by the SEC in connection with its consideration of Amendment 4 in order for proposed Rule 2821 to be workable for all distribution channels.

BACKGROUND

Proposed Rule 2821 would create recommendation requirements (including a heightened suitability obligation), expanded principal review and approval requirements, and supervisory and training requirements with respect to deferred variable annuity ("variable

[1] The Committee of Annuity Insurers is a coalition of 31 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over half of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

[2] File Number SR-NASD-2004-183; Amendment No. 4 to Proposed Rule Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities; March 5, 2007 ("Amendment 4 Rule Filing").

annuity") transactions. The rule was first proposed in 2004 and has been amended four times, most recently in March 2007.

Amendment 4 revises the principal approval provision of the rule by requiring that prior to transmitting a customer's application for a variable annuity to the issuing insurance company for processing, but not later than seven business days after the customer signs the application, a registered principal of the broker-dealer firm selling the variable annuity shall review and determine whether he or she approves of the purchase or exchange of the variable annuity.[3]

The NASD's filing of Amendment 4 with the SEC notes that, in order to reconcile the conflict between a broker-dealer holding customer funds to perform the review of the variable annuity transaction and the mandate to promptly transmit customer funds, the NASD would clarify that a broker-dealer that is holding a variable annuity application and a non-negotiated check from a customer written to an insurance company for a period of seven business days or less would not be in violation of the prompt transmittal requirements of Conduct Rules 2330 and 2820. Further, the NASD indicates it will seek no-action relief from the SEC staff regarding Rules 15c3-1 (the "net capital rule") and 15c3-3 (the "customer protection rule") under the Securities Exchange Act of 1934 (the "1934 Act") when the same circumstances exist, and indicates that the principal pre-approval standard proposed by the NASD is "contingent upon the SEC's providing such relief."

GENERAL SUMMARY OF COMMENTS

Amendment 4 raises significant interpretative and practical compliance issues regarding the handling of customer funds and applications. Unless and until these issues are addressed, proposed Rule 2821, if adopted, will not provide enough clarity to dictate appropriate practices. The Committee respectfully requests that guidance be provided with respect to the following issues:

* Many insurance companies have centralized units responsible for the contract issuance process. Often, an insurer's contract issuance unit is co-located with an office of its captive broker-dealer, and both legal entities share personnel with one another. Clarification is needed that the receipt of customer applications by such centralized units should not necessarily be deemed "transmittal to the issuing insurance company for processing" under proposed Rule 2821(c) or receipt by the insurer for purposes of Rule 22c-1 of the Investment Company Act of 1940 ("1940 Act").

* Clarification is needed regarding different situations where the principal review exceeds seven days.

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[3] Proposed Rule 2821(c).

* Clarification is needed regarding the degree of flexibility afforded to firms with respect to the safekeeping of customer funds during the review period. Rather then dictating specific procedures, firms should be permitted to design procedures tailored to their business model.

In addition to these issues for which the Committee seeks clarification on proposed Rule 2821, the Committee also requests that consideration be given regarding certain aspects of the proposed no-action relief from Rules 15c3-1 and 15c3-3 of the 1934 Act. Specifically:

* The Committee requests that the SEC consider whether another form of administrative action (e.g., rulemaking or exemptive order) is more appropriate than a no-action letter.

* The Committee also urges that any relief should not be limited solely to those broker-dealer firms operating pursuant to an exemption from the customer protection rule that hold an application and check for a variable annuity purchase. Relief should be extended to broker-dealers selling variable annuities whenever their status under Rule 15c3-1 and Rule 15c3-3 is in question as a result of their review of a variable annuity transaction under proposed Rule 2821.

The Committee believes that the comments we raise with respect to insurance company contract issuance units and the no-action relief are critical, and we respectfully submit that proposed Rule 2821 not advance without the clarifications and modifications discussed in this letter.

COMMENTS ON PROPOSED RULE 2821 AND THE NO-ACTION LETTER RELIEF

Insurance Company Contract Issuance Units and Captive Broker-Dealers

Virtually all insurance companies have centralized units that are responsible for the variable annuity contract issuance process. These units review applications to make sure that they are "in good order" for contract issuance. From a legal perspective, the contract issuance process is distinct from the broker-dealer suitability review process, even when a broker-dealer firm affiliated with the issuing insurance company sold the variable annuity.

In many instances, an insurer's contract issuance unit is physically resident at the same location as one of the insurer's captive broker-dealer offices, and both areas share personnel with one another. Often, from the broker-dealer's perspective, such locations are registered as an Office of Supervisory Jurisdiction of the broker-dealer because

personnel at that location are involved in some manner in the broker-dealer's final approval of the variable annuity application.

Rule 22c-1 of the 1940 Act ("Rule 22c-1") stipulates that a registered separate account that issues variable annuities must price initial purchase payments in accordance with what is commonly referred to as the "two-day/five-day rule." Under this rule, if an initial purchase payment is received by the insurer along with the contract application and all other information needed by the insurer to process the purchase order, then the payment must be priced no later than two business days after receipt by the insurer.

Today, NASD rules do not require the principal pre-approval of variable annuity transactions. This provides insurers with flexibility to initiate the contract issuance process when the customer application and funds are received by their contract issuance units while these units are also conducting a suitability review (or some other aspect related to final acceptance of the transaction) in a broker-dealer capacity.

Upon the adoption of Rule 2821 as now proposed, however, it will be necessary for insurers and captive broker-dealers using centralized units to delay the insurer's contract issuance process until the broker-dealer suitability process is complete. It is critical that clarification be provided that receipt of customer applications by such centralized units is not necessarily deemed "transmittal to the issuing insurance company for processing" under proposed Rule 2821(c), and also is not necessarily deemed receipt by the insurance company for purposes of Rule 22c-1. While the content of Footnote 8 in the Amendment 4 Rule Filing attempts to generally address this point, we believe the SEC should provide comfort that expressly permits organizations to implement reasonable procedures differentiating the broker-dealer review process from the contract issuance process. Specifically, the Committee recommends that clarification be provided that insurers and their captive broker-dealers could design and implement written procedures covering at what point in time centralized units are deemed to receive customer applications and funds for purposes of Rule 22c-1, and, similarly, at what point the applications and funds have been transmitted to the insurer under proposed Rule 2821. Further, as called for by Rule 22c-1, variable product prospectuses would provide disclosure regarding when customer application and funds are considered to be received for purposes of contract issuance.

Principal Approval Exceeds Seven Days

The Committee believes that seven days should provide a sufficient amount of time to review most transactions. However, there may be circumstances in which a principal has not completed his or her review within the seven-day time period. Further, there may be circumstances where the customer has reason to know that there may be a delay and consents to extending the review period. Clarification should be provided concerning whether, under these circumstances, a broker-dealer firm may hold the customer application and funds beyond seven days. The Committee also requests clarification on

whether a transaction for which the principal approval is not timely obtained would require a new customer application and new customer funds for the variable annuity purchase. The Committee recommends that consideration should be given to allowing the broker-dealer firm to determine whether it will complete a new application, or obtain a written statement from the client regarding the re-submission of the same application, or choose some other method that indicates the customer's intent to proceed with the purchase of the variable annuity.

Procedures for Safeguarding of Customer Funds

Given that broker-dealer firms will have as many as seven business days to approve a transaction, customer funds may be held for at least that amount of time. The Committee believes that, based on the variety of distribution structures, broker-dealer firms should be provided with the ability to design procedures regarding the safeguarding of customer funds, including both the means of safeguarding and the location at which the funds are maintained, that are reasonably designed to protect the customer's funds until the firm's review is completed. The Committee requests express, flexible guidance providing the standards under which a broker-dealer firm may safeguard customer funds that are held awaiting principal review under proposed Rule 2821.[4]

No-Action Relief from 15c3-1 and 15c3-3 of the Securities Exchange Act

As we noted in our April 9, 2007 letter, without understanding the exact nature of the proposed no-action relief from SEC Rules 15c3-1 and 15c3-3, it is difficult to assess the overall impact of the revised rule requirements on a particular distribution structure for variable annuities. While the Committee does not object to combining the issuance of proposed Rule 2821 with no-action relief, it does believe that the ability to meaningfully comment on, and even assess the impact of, Rule 2821 as proposed in Amendment 4 is seriously undermined by the extremely limited information available concerning the specifics of the proposed relief. The only explanation of the proposed relief is the one sentence description in the Amendment 4 Rule Filing. Given the critical regulatory objectives addressed through a broker-dealer's policies and procedures related to handling customer funds, and the complex nature of both the net capital rule and the customer protection rule, the Committee is concerned about the contours of the proposed relief. With these limitations in mind, we offer the following comments regarding the proposed no-action relief.

First, we request that the SEC consider granting the proposed relief by either rulemaking or exemptive relief rather than through a no-action letter. The Committee believes that

[4] We also note that as described in its April 9, 2007 letter, the Committee is concerned that no comments have been requested or received by or from the SEC or the NASD addressing the potential delay of customer funds being invested under a variable annuity contract for up to seven (or more) business days.

the magnitude of the proposed relief calls for the procedural safeguards inherent in a rulemaking proceeding or the granting of an exemptive order or other process that ensures the opportunity for meaningful review and comment.

Second, the Committee urges that any relief from Rules 15c3-1 and 15c3-3 not be limited to the one situation identified in the filing (i.e., "[where a broker-dealer] is holding an application for a variable annuity and a non-negotiated check from a customer written to an insurance company for a period of seven business days or less"). This statement gives the impression that the no-action relief being contemplated is limited to broker-dealers who engage in sales of variable annuities exclusively on a check and application basis, and as a result, always rely on one of the exemptions from the customer protection rule under Rule 15c3-3(k) (the "K exemptions") for a variable annuity transaction.

It is critical that any relief be provided in a more comprehensive manner. For instance, many fully-computing firms (e.g., firms that do not rely on a K exemption), currently do not hold customer money related to variable annuities and therefore are not required to reserve for such monies in their Special Reserve Bank Account for the Exclusive Benefit of Customers required under Rule 15c3-3(e) ("Reserve Bank Account"). These firms will be forced by proposed Rule 2821 to hold variable annuity money until principal approval occurs, and they should be entitled to relief so that they are not required to reserve for variable annuity transactions in their Reserve Bank Account. In addition, it is also possible that firms could offer variable annuities under more than one model with respect to their funds handling. For example, one broker-dealer firm may conduct transactions under both the check and application model, and under a so-called brokerage account model. Those firms should not be restricted from relying on the relief simply because they conduct variable annuity transactions under more than one method of handling funds.

Finally, any relief should take into account that variable annuity purchases and exchanges are funded in a number of ways (e.g., brokerage account transactions and ACH transactions). The Committee believes that it is important that any relief required under the net capital rule or the customer protection rule as a result of holding customer funds to conduct a review required under proposed Rule 2821 be extended to all broker-dealer firms.

CONCLUSION

The Committee appreciates the opportunity it has had to comment on proposed Rule 2821 during the course of the rulemaking, and would be pleased to provide more specific input on any of the issues and recommendations discussed in this letter.

Respectfully Submitted,

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FOR THE COMMITTEE OF ANNUITY INSURERS

cc: The Honorable Christopher Cox
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Kathleen L. Casey
The Honorable Annette L. Nazareth
Erin R. Sirri, Division of Market Regulation
Andrew J. Donohue, Division of Investment Management

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS

AEGON USA, Inc.
AIG American General
Allstate Financial
AmerUs Annuity Group Co.
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company (a Goldman Sachs Company)
Conseco, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North American Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
Merrill Lynch Life Insurance Company
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
OM Financial Life Insurance Company
Pacific Life Insurance Company
The Phoenix Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
RiverSource Life Insurance Company (an Ameriprise Financial Company)
Sun Life of Canada
USAA Life Insurance Company