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Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F. Street, N. E.
Washington, D.C. 20549-1090

Re: File No. SR-NASD-2004-183

To Whom It May Concern:

We are law professors who have served as arbitrators at NASD Dispute Resolution and written extensively about securities law.[1] In addition, we have represented small investors in their disputes with brokers and advocated on behalf of the rights of individual investors. We are writing in response to the SEC's Order granting accelerated approval of NASD's Proposed Rule, As Amended, Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities and its request for comments on Amendment Nos. 3 and 4. We have commented twice previously, on behalf of the Pace Investor Rights Project, and appreciate this opportunity to comment on the newly amended proposal.

We are disappointed that the final version of NASD's rule to regulate the sales of deferred variable annuities ("DVAs") does not address our previously stated concerns and those of other investor advocates. Abusive sales practices relating to DVAs are well known, as the brief summary at p. 34 of the SEC's Order makes clear. In response, NASD initially proposed Rule 2821 in December 2004. In response to the proposal, the SEC received approximately 1500 comment letters, of which 1300 were virtually identical and filed by licensed insurance professionals and variable product salespersons. In June 2006 NASD filed Amendment No. 2, which occasioned 1950 comments, of which 1700 were virtually identical and filed by licensed professionals and variable product salespersons. We file this letter to express our disappointment that final Rule 2821 has been further diluted, apparently in response to industry pressure.

Rule 2821, as adopted, provides insufficient protection to investors purchasing DVAs. In our first comment letter (dated September 19, 2005), we disagreed with NASD's decision to abandon its original proposal to require that member firms provide customers purchasing a DVA with a current prospectus and "plain English" risk disclosure. We urged the SEC to provide

[1] Alice Brodie, Staff Attorney for the Pace Investor Rights Clinic (admission pending), provided substantial assistance in the preparation of these comments.

specific standards for principal review of age, liquidity needs, and the dollar amount involved. Our second letter (dated July 19, 2006) noted the then-amended proposed rule had instead been further watered down, apparently in response to complaints from DVA sellers. The product-specific disclosure requirement had vanished entirely, as had the requirement that members establish standards for principal review of age, liquidity needs and the dollar amount involved.

With Amendments 3 and 4, Proposed Rule 2821 has lost still more of its bite. For example, in Amendment 3, NASD eliminated the requirement that registered principals sign registered representatives' suitability determinations. In addition, NASD inserted language more explicitly providing that no product-specific disclosure be required. As the disclosure provision now reads, the member or associated person with the member must have a reasonable basis to believe only that the "customer has been informed, in general terms, of various features of variable annuities…."

We fear that investors – many of them elderly – will continue to be victimized by sellers of these notoriously complex and frequently misunderstood products. SEC enforcement actions and our own experiences representing investors of modest means strongly suggest that DVA sellers need more specific suitability standards and less discretion, while investors need to know, in plain English and in dollars and cents, what they are getting.

Thank you for your consideration of these comments.

Respectfully submitted,

Jill I. Gross and Barbara Black