BOB FITZSIMMONS, CFP® -
President, Bob FitzSimons, Inc.
Greentree Court
210 Gateway Mall, Suite 426
Lincoln, NE 65805-2480
(402) 465-5678

July 14, 2006

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

Ref: Release No. SR-NASD-2004-183, Amendment Number 2, *Proposed Variable Annuity Sales Practice & Supervisory Standards Rule (NASD Rule 2821)*

Dear Ms. Morris:

This is a follow up to my memo of August 10, 2005 in which I commented on the proposed NASD Rule Concerning Supervision and Suitability in the Sale of Variable Annuities. I am a securities licensed and securities salesperson with more than 18 years in the investment business. I have been a Certified Financial Planner Professional since 1990.

In the last 12-months deferred variable annuities have become more important in my practice, as ***living benefits riders*** have become an innovative material feature of deferred variable annuities. Industry sales of variable annuities have been exceptionally strong due in part to the insurance industry adding living benefit riders that guarantee investment growth, income for life and the flexibility to decide when they want to receive the income for life without annuitizing the deferred variable annuity.

I am not convinced the NASD has made a compelling case for the proposed rule to regulate variable annuity sales practices and supervisory standards rules. The available data simply does not support the NASD's claims that the level of sales problems in the variable annuity marketplace calls for the adoption of the proposed rule. Do we really need these new regulations when only 0.50% of unsuitable disciplinary actions over the last five years were related to variable annuities? Complaints on the unsuitability of mutual funds and individual securities far outnumber those of variable annuities.

I continue to believe the NASD has adequate rules and enforcement mechanisms in place to regulate the sales practices of variable annuities. I would urge the NASD to place additional emphasis on the enforcement of the existing Conduct Rules.

I believe that member firms selling variable annuities can improve the training and education of registered securities representatives and their supervisors without additional regulatory mandates.

I also believe more meaningful disclosures to my clients via the prospectuses should be pursued, so that disclosures of the numerous material features of deferred variable annuities will occur in a more uniform and standardized presentation.

I would think that NASD has noted during their periodic inspections of member firms and branch offices that more and more member firms are requiring their licensed securities representatives to complete detailed variable annuity checklists and certification forms. I believe that most member firms are requiring their licensed security representatives to complete a variable annuity disclosure form that addresses many of the concerns cited in the NASD's proposed current rules on product suitability obligations and the disclosure of the material features of variable annuities in general.

I am very concerned the proposed rules for variable annuities will have substantial unanticipated consequences for customers by raising the barriers to their sale. I worry that variable annuities will not be offered to customers who could benefit, as the recent additions of living benefit riders makes variable annuities excellent tools for the baby boomers. This group of 70+ million is very concerned about the relatively small retirement portfolio they own, plus a Social Security program that is predicted to not be able to fund all the future obligations it currently has on the books. After the market correction in 2000-2002, this generation is being increasingly attracted to the benefits being offered by the leading variable annuity providers

Recognizing that the SEC may still approve the proposed new variable annuity rules, I have several concerns relative to the suitability obligations cited in the proposed rule:

1. It would be helpful if the NASD clarified the inclusion of *"**investment experience"*** as one of several criterion for determining suitability. Does the NASD mean for this criterion to apply to the variable annuity itself, the sub-accounts or both? Further, if a prospect has no prior investment experience, would this mean we should not suggest a variable annuity?

2. How is "***intended use of the deferred variable annuity"*** different from the customer's investment objective? For example, would estate planning or tax deferral qualify as a legitimate "intended use" or is a more detailed analysis required?

3. The proposed rule requires making reasonable efforts to obtain information on the customers "***existing investment and life insurance holdings."*** What bearing will this have on suitability determination? Does NASD mean that if a client owned any life insurance products, fixed annuities, equity indexed annuity or similar products; the NASD would conclude that a variable annuity is unsuitable? If so, on what basis?

Finally, with respect to the current proposed rules, I have several concerns relative to the Principal Review and Approval Process. Specifically:

1. The principal review process includes a reference to "***undue concentration***" of assets in variable annuities that should be clarified. How will member firms come up with a standard that can possibly cover all the various portfolio situations our clients come to us with. Far too much risk is being placed upon the industry and potentially too much discretion in the hands of regulators.

2. We will be required to obtain information for the principal's review if the customer's account has had "***another deferred variable annuity exchange within the preceding 36 months."*** In some cases, clients/prospects use multiple advisors or have non solicited investments and simply refuse for privacy reasons to share such information with their advisor. It would therefore be helpful for the NASD to clarify what to do if the client refuses to provide such information.

In summary, I believe the currently proposed Variable Annuity Sales Practice & Supervisory Rule 2841 is redundant, unnecessary, and will provide no meaningful additional protection to consumers. Appropriate enforcement of the existing suitability rule rather than adopting a new rule is a proper response. If, however, the SEC approves the current proposed rule, clarification of several elements of the suitability obligations and the principal approval and review process would be helpful.

Thank you for your consideration of my views. I appreciate the opportunity to submit comments.

Sincerely,

Robert H. FitzSimmons, CFP