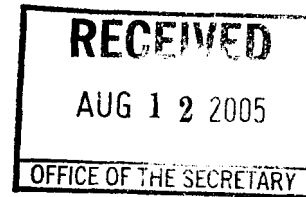




August 2, 2005



Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-9303

*SR-NASD-2004-183*

Re: Comment on NASD Amendments to Proposed Variable Annuity Sales Practice & Supervisory Standards (NASD Rule 2821)

Dear Mr. Katz:

Cambridge Investment Research, Inc. ("CIRI"), a registered broker dealer appreciates this opportunity to comment on the NASD amendments to proposed variable annuity sales practice & supervisory standards (NASD Rule 2821). We, like most broker dealers in the industry, support regulatory reforms to address issues identified in the Joint SEC/NASD Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products, issued June 8, 2004 (the "Joint Report").

We agree that these products have many features that make them complex investments. We support the NASD's effort to enhance investor education and protection. We believe that the industry as a whole has not been as effective as it would like in educating supervisory and retail sales personnel and customers about the complexities, limitations and internal costs of these products. For example, at CIRI, we have special procedures in place for the supervision and approval of variable annuity sales as well as special disclosure required with each trade to help educate the client to the intricacies of the product. These procedures and extra disclosures were put in place not because of a mandate from a regulatory body, but rather as a commitment of our continual desire to properly supervise the products available for sale to our clients and educate those clients on these products. We would like to break the Proposed Rule into parts and comment on each of them separately below.

### Time Horizon

Paragraph (b)(1) of the Proposed Rule provides that a broker-dealer may not recommend the purchase, sale or exchange of a Deferred Variable Annuity ("DVA") unless it has a reasonable basis to believe, among other things, that the customer has a long-term investment objective. This language would permit the NASD to take the position that it is per se unsuitable to recommend a DVA to any customer who meets all of the other suitability criteria except that he/she does not have a long-term investment objective. We believe that time horizon should be only one factor in determining suitability and it

should be measured on a case-by-case basis in light of the DVA's features and the customer's other investment objectives and needs. This in no way means that time horizon should not be considered, only that making a decision based solely on this one dimensional approach would be inappropriate. As such, we believe the NASD should include time horizon as one of the suitability criteria listed in Paragraph (b)(2) of the Proposed Rule. In addition, the NASD must define what it means by "long-term investment objective" so that broker-dealers will have a clear understanding in which to apply to DVA transactions. Because of several new features and benefits of DVA's as well as new products that will come out in the future as the industry grows, not all require or will require a customer to have a long-term time horizon.

### **Product Specific Suitability Criteria**

Paragraph (b)(2) of the Proposed Rule provides that a member must make reasonable efforts to obtain certain product specific suitability information about the customer prior to recommending a DVA purchase or exchange. Although we support the NASD's listing of specific suitability criteria necessary to support a recommendation, we are concerned that certain product specific criteria listed by the NASD are either unclear or irrelevant to a suitability determination. We are most concerned by the fact that the NASD believes it has to go far beyond the suitability criteria contained in its general suitability rule (Rule 2310) to establish a product specific suitability rule directed only at DVA's. The only other product specific suitability test imposed by the NASD outside Rule 2310 applies to options, currency warrants, index warrants and securities futures.

### **Principal Review**

Paragraphs (c) and (d) of the Proposed Rule require broker-dealers to establish certain specific suitability standards to be applied in connection with their supervisory review. Since it appears that there is some standard, it should be specifically stated so that members are operating on a level regulatory and business playing field. Also, by specifically stating the standards in the rule, the NASD will avoid the inevitable consequence that different NASD districts will establish and impose their own standards, which will likely vary from district to district.

### **Training**

Paragraph (e) of the Proposed Rule requires members to develop and document training policies and programs designed to ensure that associated persons who sell and supervise DVAs understand the general material features of the products, including liquidity issues, sales charges, fees and market risks. CIRI strongly supports this component of the Proposed Rule. It has been the lack of this kind of training that has the industry at the point it is now. Training and understanding of the product is as important to the suitability determination as anything else.

## **Disclosure**

CIRI strongly supports the NASD's effort, as discussed in NtM 04-45, to provide customers with better, more meaningful disclosure. For example, we support the addition of a "plain English" summary discussion of and Q&A on product features and risks at the beginning of the prospectus that links to a more detailed discussion of each item in the body of the prospectus. We believe that a "plain English" summary of risks and features combined with a Q&A that covers commonly misunderstood or confusing issues would encourage customers to read at least those portions of the prospectus that are most meaningful to their investment decision.

## **Unintended Consequences**

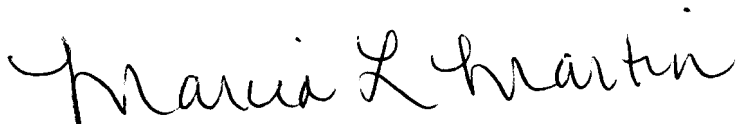
CIRI recognizes that there have been some serious abuses involving the sale and exchanges of DVAs. We do not believe, however, the sales abuses have occurred because the NASD's rules and enforcement mechanisms were not strong enough to prevent them. The NASD has determined that the costs and the complexities of these products may outweigh the benefits they can provide to customers under any set of circumstances. CIRI disagrees. This appears simply to be an overreaction to the sales practice abuses of a few firms at the expense of many. Additional rules will not fix the problem nearly as efficiently as stricter enforcement of the rules already in place. In this case in particular there is a clearly defined rule already in place in NASD's general suitability rule (Rule 2310).

## **Conclusions**

The Institute supports both reform and education of securities industry personnel to address the problems that have been identified by the SEC and NASD in the Joint Report. The upward trend in customer complaints and enforcement proceedings involving variable annuities sales practices is a concern to CIRI and the industry. We believe the recommendations described above are an important – and necessary – first step in addressing many of the underlying causes for these industry problems.

Again, thank you for the opportunity to comment on the Proposed Rule.

Sincerely,



Marcia L. Martin  
Chief Compliance Officer  
Cambridge Investment Research, Inc.