



Via Email: rule-comments@sec.gov

September 16, 2005

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

Re: Comment on Proposed NASD Rule 2821, Deferred Variable Annuities
File No. SR-NASD-2004-183

Dear Mr. Katz:

InterSecurities, Inc. (ISI) appreciates the opportunity to respond to the Securities and Exchange Commission's proposed NASD Rule 2821, Deferred Variable Annuities. ISI is a registered broker-dealer conducting business in all 50 states and operates as an introducing firm primarily distributing variable insurance products and mutual funds with 2,200 registered representatives and approximately 400 branch offices.

With respect to Proposed NASD Rule 2821, we wish to make the following points as well as requests for clarification:

General Considerations

1. Proposed Rule 2821 (b)(1)(A) provides that, prior to making a recommendation, an associated person must have a reasonable basis to believe that the customer has been informed of the "material features" of the deferred variable annuity.

This requirement is redundant. All customers purchasing registered variable annuities receive a prospectus that provides detailed information on the material features of the recommended product. Any discussion of the material features of a product should be contained in the prospectus prepared by the product manufacturer. NASD NTM 99-35 provides that "To the extent practical, a current prospectus should be given to the customer when a variable annuity is recommended. Prospectus information about important factors, such as fees and expenses, and the illiquidity of the product, should be discussed with the customer." Requiring representatives to identify and summarize "material features" of a deferred variable annuity would likely lead to inconsistencies in disclosures developed for the same variable annuities by

different broker-dealers or registered representatives. Requiring summaries of disclosures prepared by third parties invites selective disclosure and exposes representatives to liability for omissions in abbreviating critical information.

If the Securities and Exchange Commission has concerns that prospectuses are too confusing, too long or do not provide adequate summaries of key features and products, we respectfully submit that the SEC should propose revisions to the prospectus content requirements.

Additionally, although the NASD's amendment provides that members now have a choice between verbally disclosing the material features or providing the customer with a written disclosure statement, determinations made pursuant to sections (b)(1)(A)-(D) must be documented and signed by the associated person. We respectfully request clarification that the requirement to document disclosures that have occurred does not impose upon the broker-dealer or registered representative the obligation to prepare a written checklist or summary of material features of the recommended variable annuity. The NASD should clarify that the requirements of Rule 2821(b)(1)(A)-(D) can be satisfied by a written representation that the representative has reviewed and discussed the prospectus or the chart of fees and charges with the customer.

2. Proposed Rule 2821(b)(1)(C) requires that, prior to recommendation, an associated person have a reasonable basis to believe that the customer has a need for the features of a deferred variable annuity as compared with other investment vehicles.

The NASD has said that this provision does not require a side-by-side comparison of products, but it does require associated persons and principals to make reasonable efforts to ensure that the customer has some need for the unique features of a deferred variable annuity. As such, a 'general comparison' with other types of investment products would need to be made.¹ Moreover, a side-by-side comparison would be required where one deferred variable annuity is being exchanged for another.

Comparisons of the features, benefits, fees, charges, and surrender periods are possible for like products, such as when customers exchange one variable annuity for another or when customers choose between subaccounts of a variable annuity. However, comparisons of dissimilar products, such as mutual funds, variable annuities, certificates of deposit, exchange-traded funds, etc. can be misleading if the comparisons are not sufficiently detailed and qualified. For these reasons, NASD Rule 2210(c) (2) requires member firms to submit to the NASD within 10 business days of use or publication, sales literature containing product comparisons, along with documentation supporting the comparison.

Furthermore, the comparison with other investment products implies a belief on the part of the NASD that variable annuities are interchangeable with other securities, such as mutual funds. This is fundamentally incorrect. Variable annuities offer unique features not available with any other product. Only annuities offer principal protection features like death and living

¹ An example used by NASD is "if the customer does not need the insurance feature or tax deferral, for instance, then another product might be more appropriate for the customer, depending on his or her objectives and financial situation and needs."

benefits or can provide a guaranteed lifetime stream of income. Because of these unique features, variable annuities are not “comparable” to other investment vehicles. As such, the comparison approach in proposed Rule 2821 is not an appropriate way to analyze a customer’s needs and whether a deferred variable annuity is a suitable investment to meet those needs.

We also presume the NASD is not suggesting that representatives should summarize features of products they are not licensed or registered to sell. Thus, any discussion of “other investment vehicles” would be limited to products on the broker-dealer’s approved product list, for which the representative was licensed, appointed, and registered to sell. This provision of the proposed rule also suggests that an associated person may not be able to recommend products on the firm’s approved list if other products exist on the market, which are suitable, but not on the approved list. Although registered representatives are permitted to provide investment advice “incidental” to activities requiring registration, this provision appears to require representatives to provide investment advice and recommend the “most suitable” product instead of one of a number of products that may be suitable for the clients needs.

We question how a representative could provide any sort of “general” comparison of all the products, which the representative is registered, licensed and appointed to sell, without including all the important details and disclaimers relevant to all of the product features, regardless of whether the features were recommended.

Finally, because NASD Rule 2310 requires that any recommendation to purchase a security be suitable for the customer, the comparison requirement in proposed Rule 2821 could be interpreted to mean that a deferred variable annuity must be not only a suitable product but more suitable or appropriate than any other investment vehicle. Imposing such an unfair standard on one security seems totally unjustified and could create an extremely uneven playing field with serious anticompetitive unintended consequences.

We respectfully request that the SEC remove the requirement to compare recommended variable annuity features to features of other products currently available. We do not object to an NASD requirement to determine that a customer has a need for the features of a deferred variable annuity, or that the representative determine that the deferred variable annuity and its underlying subaccounts are suitable for the customer. However, we respectfully submit NASD Rule 2310(a) already requires a registered representative to have reasonable grounds for believing that any recommendation is suitable for a customer based upon facts disclosed regarding the customer’s financial needs and situation. NASD NTM 99-35 also provided that representatives must discuss all relevant facts with the customer including features of variable annuities, such as: mortality and expense charges, administrative charges, investment advisory fees, applicable state and local premium taxes, etc. We feel that the suitability standards that are currently in place are sufficient, especially in light of the fact that an associated person is limited to selling suitable products on an approved list, which the representative is licensed and qualified to sell.

Principal Review and Approval

3. Proposed Rule 2821(c)(1)(A) requires a registered principal, in approving the purchase or exchange of a variable annuity, to consider whether the customer appears to have a need for the features of a deferred variable annuity as compared with other investment vehicles.

While we agree that the principal should consider whether the customer has a need for the features of a variable annuity, for the reasons discussed above in Point 2 pertaining to section (b)(1)(C), the comparison requirement is unacceptable and should be removed. Under current NASD Rules and Notice to Members 99-35, a registered principal must consider whether a customer appears to have a need for the features of a deferred annuity, prior to approving a transaction on behalf of the firm. This provision, like the remaining sections of this Rule proposal, is unnecessary.

4. Proposed Rule 2821(c)(1)(B) requires a registered principal, in approving the purchase or exchange of a variable annuity, to consider whether the customer's age or liquidity needs make a long-term investment inappropriate, such as a customer over a specific age (standard established by the member) or with a short-term investment objective (standard established by the member).

We believe that this provision should be removed. The customer's age, and whether a long-term investment is appropriate for that specific age, indicates a presumption that a deferred variable annuity is appropriate only within a certain age category. Many annuities available today offer guaranteed minimum withdrawal benefit riders which include surrender periods of five years or less. Other products offer a living benefits rider, which provides a guaranteed lifetime income without annuitizing. This allows customers to receive periodic income payments while money continues to grow tax deferred. Still other products offer home health or nursing home care benefits that permit clients to start receiving periodic income payments while their money continues to grow tax-deferred.

There may be numerous reasons why a deferred variable annuity is suitable for younger investors or short-term investments. Each case requires a facts and circumstances test, which is sufficiently covered under current suitability standards under Rule 2310 and Notice to Members 99-35. The proposed standard would draw a line in the sand and eliminate the ability to recommend products that fit specific needs of customers.

5. Proposed Rule 2821 (c)(1)(C) requires a registered principal, in approving the purchase or exchange of a variable annuity, to consider whether the amount of money invested exceeds a stated percentage of the customer's net worth (standard established by the member) or is more than a stated dollar amount (standard established by the member).

We are concerned with using a customer's net worth as a measuring rod. An individual could have a great deal of net worth, but it may be mostly illiquid (for example, tied up in real estate or a closely held business). The general consensus is that these requirements deal with issues

appropriately addressed under current facts and circumstances test, and, therefore, are unnecessary. Moreover, there is a danger in narrowing or emphasizing two or three elements of a customer's profile when analyzing the suitability of a product. NASD has historically taken a broader view that requires analyzing all of the facts and circumstances relevant to a customer's financial situation and objectives. See NASD NTM 99-35.

As such, it is recommended that this provision be removed. However, if the NASD and SEC decide not to remove it, we recommend that looking at a customer's "liquid net worth" is a more appropriate standard.

6. Proposed Rule 2821(c)(1)(D) requires a registered principal, in approving the exchange of a variable annuity, to consider whether, among other things, the customer's account has had another deferred variable annuity exchange within the preceding 36 months.

We are concerned that this standard may signal to representatives that exchanges are appropriate as long as they are more than 36 months apart. In certain cases a single exchange may be inappropriate and should trigger a closer review. In other instances, a product may include important features that make it a better alternative to a product previously recommended to a customer. Unless the prior exchange occurred through the same broker-dealer, the registered principal may have no way of determining if there was a prior exchange less than three years ago. We believe that, consistent with current standards outlined in NASD Rule 2310 and NTM 99-35, any review of suitability should take into account the specific circumstances of the client, the features of the product recommended, whether the exchange is a result of a need for a special feature and the match between these factors. Generating and reviewing representative sales activity for patterns of inappropriate replacements should be part of the firm's supervisory procedures, not a requirement to approve each transaction.

7. Proposed Rule 2821(c)(2) requires a registered principal, after taking into account the underlying supporting documentation described in paragraph (b)(2), to review, determine whether to approve and, if approved, sign the suitability determination document required in paragraph (b)(1) of the proposed rule.

We are concerned whether requiring the principal to sign the suitability determination document raises the standard of care and/or creates a new level of liability for the principal without adding any protection for the customer. Also, since the rule permits oral discussion of the disclosure required in Proposed Rule 2821(b)(1), the suitability determination document developed by the firm to satisfy requirements of Proposed Rule 2821(b)(1) may do nothing more than contain a representation by the representative that the required items were discussed orally. The registered principal would be in no position to acknowledge that this disclosure had occurred without calling each customer.

NASD rules currently require a registered principal of the firm to review and approve each transaction on behalf of the firm. This includes a review and approval for suitability. Requiring a registered principal to sign the representative's acknowledgement of disclosures adds nothing to this requirement or to the level of customer disclosure.

Supervisory Procedures

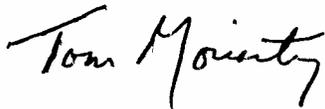
8. Proposed Rule 2821 (d) requires the member to establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in the Rule. The written procedures specifically address the principal review and approval requirements in section (c)(1)(A)-(D). As such, the above discussions with respect to section (c)(1)(A)-(D) are equally applicable to section (d)(1)-(4).

Implementation Date

9. Should the SEC approve this Rule as proposed, we respectfully submit that firm's will need sufficient time to develop the required procedures and disclosures and to train representatives and principals on procedures for a single product. We respectfully request that the SEC provide a period of implementation of at least six months from the date Rule 2821 is adopted.

We appreciate the opportunity to comment on this proposed rule. If you wish to discuss this further, you can reach me at (727) 299-1837.

Sincerely,

A handwritten signature in cursive script that reads "Tom Moriarty".

Thomas R. Moriarty
President,
InterSecurities, Inc.