

MEMO# 22611

June 17, 2008

FINRA Files Proposal to Amend Rule Governing Deferred Variable Annuities; Conference Call Scheduled for June 19, 2009

[22611]

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TO: VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 18-08
SEC RULES COMMITTEE No. 39-08 RE: FINRA FILES PROPOSAL TO AMEND RULE
GOVERNING DEFERRED VARIABLE ANNUITIES; CONFERENCE CALL SCHEDULED FOR JUNE
19, 2009

As we previously informed you, [\[1\]](#) FINRA filed a proposed rule change with the Securities and Exchange Commission that seeks to amend and clarify portions of the deferred variable annuity sales practice standards and supervisory requirements found in new Rule 2821. [\[2\]](#)

Comments on the proposed rule change are due to the SEC no later than July 1. We have scheduled a conference call for Thursday, June 19, 2008 at 2 pm Eastern to discuss the proposal. The dial-in number for the conference call will be 1-888-989-9825 and the passcode for the call will be 69086. If you plan to participate on the call, please contact Jennifer Odom by e-mail at jodom@ici.org or by phone at 202/ 326-5833.

Specifically, FINRA proposed to amend three components of Rule 2821 in response to commenters concerns. [\[3\]](#) First, the proposal would limit the rule's application to recommended transactions. To ensure that this proposed change is not abused, FINRA emphasizes in the proposal that members must implement reasonable measures to detect

and correct circumstances when brokers mischaracterize recommended transactions as non-recommended. Second, the proposal would modify the beginning of the period within which the principal must review and determine whether to approve or reject the application. The amended period would begin to run not from the date of the customer's signature but from the date when the firm's office of supervisory jurisdiction receives a complete and correct copy of the application. Third, the proposal would allow members to forward funds to insurance companies for deposit in the companies' suspense accounts, under certain conditions, prior to principal approval.

The proposal also would address a variety of issues in the new "Supplementary Materials" section. It would discuss customers' lump sum payments for the purchase of deferred variable annuities and other products, the forwarding of customer checks or funds to an IRA custodian prior to principal approval, and the timing of "transmittal" of the application where an insurance company and its affiliated broker-dealer share office space and/or employees. It also would discuss the permissibility of using information required for principal review in the contract issuance process and consideration of what constitutes a "reasonable effort" to determine whether a customer has had a recent exchange at another broker-dealer. On this last point, the proposal would note that an analysis of whether the customer has had another recent exchange includes possible exchanges at other broker-dealers.

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endnotes

[1] See Memorandum to Variable Insurance Products Advisory Committee No. 17-08 and SEC Rules Members No. 48-08, dated June 2, 2008 [22575].

[2] See SEC Release No. 57920 (June 4, 2008), 73 FR 32771 (June 10, 2008). The proposal is available at <http://www.sec.gov/rules/sro/finra/2008/34-57920.pdf>.

[3] See Letter to Nancy M. Morris, Secretary, Securities and Exchange Commission, from Heather Traeger, Assistant Counsel, Investment Company Institute, January 24, 2008.