

MEMO# 22575

June 2, 2008

FINRA Files Proposal to Modify New Rule Governing Deferred Variable Annuities

[22575]

June 2, 2008

TO: VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 17-08
SEC RULES MEMBERS No. 48-08 RE: FINRA FILES PROPOSAL TO MODIFY NEW RULE
GOVERNING DEFERRED VARIABLE ANNUITIES

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. [\[1\]](#)

On April 21, 2008, we informed members that FINRA had filed a proposal to delay the effective date of the principal review requirements of new Rule 2821 until after the SEC approves or rejects substantive changes to the rule. [\[2\]](#) Specifically, in response to commenters concerns, [\[3\]](#) FINRA had proposed to review several components of the rule including: [\[4\]](#)

- whether broker-dealers that do not make any recommendations to customers (and generally do not employ principals to perform suitability reviews) should be subject to the principal review and approval requirements;
- whether the “seven business days” period for principal review and approval is adequate, appropriate, and realistic; and
- whether insurers should be allowed to deposit customer funds in suspense accounts under certain circumstances prior to completion of the principal review and approval process.

The current proposal would address each of these items and provide “Supplementary Materials” to clarify additional items raised by commenters. 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 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.

Heather L. Traeger
Assistant Counsel

endnotes

[1] The SEC has not yet published notice of the proposed rule change, but the text of it is available on FINRA’s website at http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p038532.pdf. Comments on the proposed rule change will be due to the SEC after it is published in the Federal Register.

[2] See Memorandum to Variable Insurance Products Advisory Committee No. 13-08, dated April 21, 2008 [22445].

[3] FINRA received numerous comments in response to a Regulatory Notice it published after adoption of Rule 2821, prompting it to propose delaying the effective date of the new

rule in order to (1) provide broker-dealers with additional time to make necessary systems changes and (2) consider further concerns raised by members regarding the principal review requirements. See FINRA Regulatory Notice 07-53, Deferred Variable Annuities: SEC Approves New NASD Rule 2821 Governing Deferred Variable Annuity Transactions (November 2007).

[\[4\]](#) See Letter to Nancy M. Morris, Secretary, Securities and Exchange Commission, from Heather Traeger, Assistant Counsel, Investment Company Institute, January 24, 2008 (recommending changes to the principal review requirements).

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.