

MEMO# 23410

April 22, 2009

FINRA Receives Approval for Amendments to Rule Governing Deferred Variable Annuities

[23410]

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TO: VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 8-09
SEC RULES MEMBERS No. 48-09 RE: FINRA RECEIVES APPROVAL FOR AMENDMENTS TO
RULE GOVERNING DEFERRED VARIABLE ANNUITIES

The Securities and Exchange Commission approved on an accelerated basis a proposal by the Financial Industry Regulatory Authority ("FINRA") that seeks to amend and clarify portions of the deferred variable annuity sales practice standards and supervisory requirements found in Rule 2821. [\[1\]](#) Specifically, the proposal would modify the scope and timing of FINRA's principal review requirements for sales of deferred variable annuities and provide additional clarification regarding the use of insurer suspense accounts for sales of such annuities. [\[2\]](#)

Principal Review Requirements

The proposal would (1) limit the scope of NASD Rule 2821 to recommended transactions and (2) modify the timing for the principal review requirement to begin on the date when a firm's office of supervisory jurisdiction ("OSJ") receives a complete and correct copy of the application for a deferred variable annuity. The proposal also would require the associated person who recommended the annuity to promptly transmit the complete and correct application package to the OSJ. [\[3\]](#)

Supplementary Material

The Supplementary Material for NASD Rule 2821 would address, among other topics, the use of insurer suspense accounts for sales of deferred variable annuities. Specifically, the proposal would permit a member to forward funds to an insurance company for deposit in the insurer's "suspense account" pending completion of principal review of the application for a deferred variable annuity. FINRA clarified that a member must have reasonable assurances that the insurance company will handle customer funds in a manner that provides at least as much protection as if those funds were handled by a broker-dealer that is permitted to hold customer funds. [4] In addition, the proposal would allow an insurer to use one segregated account for the customers of all the broker-dealers with which it does business.

In the event that a check must be returned to a customer (i.e., denial of an application), the proposal would provide that an insurer could make checks payable to the broker-dealer if the broker-dealer is permitted to hold customer funds. If not, the insurer would need to make the check payable to the customer, and the broker-dealer would be required to forward the check to the customer "promptly" and keep an incoming and outgoing record of the customer checks, as well as any other funds that are remitted to the broker-dealer. Finally, the proposal would require that an insurance company receive both a notification of approval and the application before funds can be released from its suspense account.

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endnotes

[1] See SEC Release No. 34-59772 (April 15, 2009), available at: <http://www.sec.gov/rules/sro/finra/2009/34-59772.pdf>.

[2] On July 1, 2008, the Institute filed a comment letter with the SEC supporting a similar version of the proposal. See Memorandum to Variable Insurance Products Committee 20-08 and SEC Rules Members 56-08, dated July 1, 2008 [22655].

[3] The proposal would not preclude a customer who chooses to forward documents directly from transmitting the complete and correct application package to the OSJ.

[4] See Letter from James Wrona, Associate Vice President and Associate General Counsel, FINRA, to Florence Harmon, Acting Secretary, Securities and Exchange Commission, dated November 12, 2008.

should not be considered a substitute for, legal advice.