

**MEMO# 22137**

January 18, 2008

# **ICI Draft Comment Letter on FINRA Proposal Relating to Deferred Variable Annuities; Your Views Requested by January 23**

[22137]

January 18, 2008

TO: VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 3-08  
SEC RULES COMMITTEE No. 7-08 RE: ICI DRAFT COMMENT LETTER ON FINRA PROPOSAL  
RELATING TO DEFERRED VARIABLE ANNUITIES; YOUR VIEWS REQUESTED BY JANUARY 23

The Institute has prepared the attached draft comment letter on a proposed rule change to delay the effective date of the principal review requirements in new FINRA Rule 2821 for deferred variable annuities. [\[1\]](#) The draft letter is summarized below.

Comments on the proposal must be filed with the SEC no later than Thursday, January 24. Please provide your comments on the draft letter as soon as possible but no later than January 23 to Heather Traeger by phone at (202) 326-5920 or by email at [htraeger@ici.org](mailto:htraeger@ici.org).

The draft letter supports the proposed delay of the effective date for the principal review requirements in Rule 2821. The letter states that delaying the effective date will allow FINRA additional time to address several issues that the Institute believes must be resolved prior to the implementation of this provision of the Rule, particularly the required timing of the principal review and the treatment of all transactions as recommended.

Regarding the Rule's timing requirement, the letter states that the Rule does not provide adequate time to account for circumstances when a principal cannot complete their review due to circumstances outside their control. To address these concerns, the letter recommends that the principal review process be required to be completed seven business days after the broker-dealer has received an application "in good order."

The letter also states that requiring principal review where a recommendation has not been made is problematic for several reasons. First, it suggests that the principal must second-guess an investment decision made by an investor in all instances. Second, applying the principal review requirements in these situations has the potential to dissuade certain broker-dealers from continuing to offer deferred variable annuities. To address these concerns, the letter recommends that the principal review requirements should not apply where a transaction has not been recommended by an associated person of the broker-dealer. At the same time, to address any investor protection concerns, Rule 2821 could require broker-dealers that do not make recommendations regarding deferred variable annuities to maintain adequate policies and procedures to supervise and monitor customer interactions to ensure that registered representatives are acting appropriately.

Heather L. Traeger  
Assistant Counsel

#### [Attachment](#)

#### **endnotes**

[\[1\]](#) See Memorandum to Variable Insurance Products Advisory Committee No. 25-07 and SEC Rules Members No. 160-07, [22085], dated December 28, 2007.