

MEMO# 21226

June 8, 2007

Amendment No. 4 to NASD Proposal Relating to Deferred Variable Annuities

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TO: VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 7-07 RE: AMENDMENT
NO. 4 TO NASD PROPOSAL RELATING TO DEFERRED VARIABLE ANNUITIES

NASD has filed with the Securities Exchange Commission Amendment No. 4 to proposed Rule 2821 relating to sales practice standards and supervisory requirements for transactions in deferred variable annuities. [\[1\]](#) The SEC has not yet published the amendment for comment. NASD, however, has requested accelerated approval of the proposal. [\[2\]](#)

The Institute previously commented on the proposed rule change. [\[3\]](#) The Institute supported the goal of proposed Rule 2821 – to address problems relating to sales practices in the area of deferred variable annuities – but questioned: (1) the approach of establishing a separate regulatory framework for one particular investment product and (2) whether a separate rule was necessary to accomplish NASD’s goal. The Institute also questioned several specific aspects of the proposed principal suitability review requirements, including the timing of the review, the requirement to review transactions that are not recommended, and the necessity of determining a customer’s “need” for the deferred variable annuity as compared with other products. These elements of the proposal have been addressed in the most recent amendments of the proposal.

Amendment No. 4 has two primary components. First, it would substitute the phrase “has a reasonable basis to believe” for “has determined” in the requirement that a member “has determined” that a transaction is suitable in accordance with NASD Rule 2310. Second, it would address the timing of principal suitability review, by providing that a principal review must take place “prior to transmitting a customer’s application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.” NASD proposes to accommodate the impact of the seven-business day period on a broker-dealer’s obligations under rules concerning the handling of customer funds by clarifying certain of its rules and seeking no-action relief

from the SEC for rules under the Securities Exchange Act of 1934.

Heather L. Traeger
Assistant Counsel

endnotes

[1] See NASD Proposed Rule Change No. 2004-183, Amendment No. 4, filed March 5, 2007. The proposed amendment can be found on NASD's website at http://www.nasd.com/web/groups/rules_regs/documents/rule_filing/nasdw_018737.pdf.

[2] If the SEC grants NASD's request for accelerated approval, the proposed rule change will become effective on the date of the Commission's approval order simultaneous with public notice of Amendment No. 4.

[3] See Letter from Ari Burstein, Associate Counsel, Institute, to Nancy M. Morris, Secretary, SEC, dated July 19, 2006, and Letter from Frances Stadler, Deputy Senior Counsel, Institute, to Jonathan G. Katz, Secretary, SEC, dated September 19, 2005.

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