

COMMENT LETTER

January 24, 2008

ICI Comment Letter on FINRA Proposal Relating to Deferred Variable Annuities (pdf)

January 24, 2008 Nancy M. Morris Secretary U.S. Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549-1090 Re: Proposed Rule Change to Delay Implementation of Certain FINRA Rule Changes Approved in SR-NASD-2004-183 (File No. SR-FINRA- 2007-040) Dear Ms. Morris: The Investment Company Institute¹ supports the proposed delay of the effective date for the principal review requirements of new Rule 2821 relating to a broker-dealer's compliance and supervisory responsibilities for deferred variable annuities.² The new principal review requirements introduce significant changes to the way in which deferred variable annuities are sold. Delaying the effective date of these requirements will allow FINRA additional time to address several issues that we believe must be resolved prior to the implementation of this provision of the Rule. As we discussed in previous comment letters on proposed Rule 2821,³ our concerns relate primarily to two areas of the principal review requirements – the required timing of the principal review and the treatment of all transactions as recommended. 1 The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.70 trillion and serve almost 90 million shareholders. 2 See Notice of Filing of Proposed Rule Change To Delay Implementation of Certain FINRA Rule Changes Approved in SR- NASD-2004-183, SEC Release No. 34-57050 (December 27, 2007), 73 FR 531 (January 3, 2008). 3 See Letters from Frances Stadler, Deputy Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated September 19, 2005 and Ari Burstein, Associate Counsel, Investment Company Institute, to Nancy M. Morris, Secretary, Securities and Exchange Commission, dated July 19, 2006. Ms. Nancy Morris January 24, 2008 Page 2 of 3 Provide a More Flexible Timing Requirement Rule 2821 requires principal review “[p]rior 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.” As adopted, the timing requirement presents several practical problems. Most significantly, the Rule does not provide adequate timing to account for circumstances when principals cannot complete their review in the required timeframe due to circumstances outside their control. For example, a customer may inadvertently omit information from the application; information provided by a customer may need clarification; a customer may sign the application but not mail it for several days;

or a customer may mail the application in a manner that delays its receipt (e.g., via regular U.S. mail). These situations can result in unintended consequences under the Rule, such as the rejection of suitable transactions, unnecessary delays in the pricing of a contract, or putting emphasis on the speed of a principal review over the quality of the review. To address these concerns, the Institute 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." Such a requirement would allow for a more thorough and meaningful principal review and would provide the necessary flexibility to address the situations discussed above. At the same time, such a requirement would not compromise any investor protection concerns, as the principal review would still be completed prior to issuance of the contract. Except from the Rule Transactions That Are Not Recommended Rule 2821 states that a principal must treat "all transactions as if they have been recommended for purposes of this principal review." 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. Specifically, the Rule contemplates a traditional platform where full service broker-dealers and their customers transact business in a face-to-face environment. The Rule does not take into account, however, that many firms offer platforms that permit investors to make informed investment decisions absent a recommendation and to conduct transactions in a manner that does not involve interaction between the investor and a registered representative. In these cases, the broker will not have sufficient information about the transaction, thereby creating significant difficulties in its ability to conduct a principal review under the Rule and significant burdens if they are required to collect the information necessary to fulfill the Rule's requirements. For these reasons, the Institute 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 Ms. Nancy Morris January 24, 2008 Page 3 of 3 the same time, to address any investor protection concerns, Rule 2821 could require broker-dealers that do not make recommendations regarding variable annuities to maintain adequate policies and procedures to supervise and monitor customer interactions to ensure that registered representatives are acting appropriately - ensuring that the broker-dealer qualifies for the exception from principal review requirements. * * * * * We appreciate the opportunity to comment on the proposal. If you have any questions regarding our comments or need additional information, please contact me at (202) 326-5920 or Ari Burstein at (202) 371-5408. Sincerely, /s/ Heather Traeger Heather Traeger Assistant Counsel cc: Andrew J. Donohue, Director William J. Kotapish, Assistant Director, Office of Insurance Products Division of Investment Management Erik Sirri, Director Catherine McGuire, Associate Director, Chief Counsel Division of Trading and Markets Securities and Exchange Commission Thomas M. Selman, Executive Vice President Investment Companies/Corporate Financing Regulation James S. Wrona, Associate Vice President and Associate General Counsel Office of General Counsel Regulatory Policy and Oversight Financial Industry Regulatory Authority, Inc.