



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to delay the effective date of certain FINRA rule changes approved in SR-NASD-2004-183 until August 4, 2008.

There are no new changes proposed to the text of the FINRA rules. Attached as Exhibit 5a is the text of paragraphs (a), (b), (d), and (e) of Rule 2821, approved pursuant to SR-NASD-2004-183, which will become effective on May 5, 2008. Attached as Exhibit 5b is the text of paragraph (c) of Rule 2821, also approved pursuant to SR-NASD-2004-183, which FINRA is proposing to become effective on August 4, 2008.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on April 21, 2004, which authorized the filing of the proposed rule change with the SEC. The Board of Governors of FINRA (then known as NASD) had an opportunity to review the proposed rule change at its meeting on April 22, 2004. No other action by FINRA is necessary for the filing of the proposed rule change.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

FINRA is proposing the effective date of paragraph (c) of new NASD Rule 2821 to be August 4, 2008.

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

On September 7, 2007, the Commission noticed the filing of Amendment Nos. 3 and 4 and granted accelerated approval of SR-NASD-2004-183, FINRA's new NASD Rule 2821, regarding broker-dealers' compliance and supervisory responsibilities for deferred variable annuities.<sup>2</sup> On November 6, 2007, FINRA published Regulatory Notice 07-53, which announced the Commission's approval of Rule 2821 (SR-NASD-2004-183) and established May 5, 2008 as the rule's effective date. Following SEC approval of the rule and publication of the Regulatory Notice, several firms requested that the effective date of the approved rule be delayed to allow firms additional time to make necessary systems changes. In addition, some firms raised various concerns regarding paragraph (c) of Rule 2821 (Principal Review and Approval), which had been substantially changed by Amendment No. 4.

Rule 2821(c), in part, requires principal review and approval "[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

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<sup>2</sup> See SEC Order Approving FINRA's NASD Rule 2821 Regarding Members' Responsibilities for Deferred Variable Annuities (Approval Order), Securities Exchange Act Release No. 56375 (September 7, 2007), 72 FR 52403 (September 13, 2007) (SR-NASD-2004-183); SEC Corrective Order, Securities Exchange Act Release No. 56375A (September 14, 2007), 72 FR 53612 (September 19, 2007) (SR-NASD-2004-183) (correcting the rule's effective date).

customer signs the application.” A number of firms asserted that seven business days beginning from the time when the customer signs the application may not allow for a thorough principal review in all cases. These firms have asked that a different timing mechanism be used.

Rule 2821(c) also states that a principal must treat “all transactions as if they have been recommended for purposes of this principal review,” and may only approve the transaction if he or she determines “that there is a reasonable basis to believe that the transaction would be suitable based on the factors delineated in paragraph (b) of this Rule.” A principal who determines that the transaction is unsuitable nonetheless may authorize the processing of the transaction if the principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the principal found it to be unsuitable, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity. Some firms questioned 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 this provision.

Finally, in Regulatory Notice 07-53, FINRA stated that Rule 2821(c) does not permit the depositing of a customer’s funds in an account at the insurance company prior to completion of principal review. In response to the Regulatory Notice, a number of firms explained that insurers’ financial controls regarding the receipt of money from customers often include holding such funds in a general “suspense” account at the insurer. According to these firms, insurers use an identifier to track money held in the suspense account and, if a contract is not issued, the funds are promptly returned to the customers. The firms further stated that this process has been used for many years

without complications, makes processing much more efficient and effective, and receives significant scrutiny by examiners from the SEC and state insurance departments.

Accordingly, these firms asked that insurers be allowed to deposit customer funds in suspense accounts under certain circumstances.

In light of these concerns, among others, FINRA staff believes it is prudent to give further consideration to paragraph (c) of Rule 2821 and the interpretation addressed in the Regulatory Notice to determine whether certain unintended and harmful consequences might ensue upon the currently scheduled effective date of May 5, 2008. If, based on this review, FINRA concludes that further rulemaking is warranted, FINRA will file a separate rule change with the Commission.

To provide adequate time for firms to make systems changes and for FINRA to consider and potentially act upon the concerns discussed above, FINRA is proposing that the effective date of paragraph (c) of Rule 2821, approved in SR-NASD-2004-183, be delayed until August 4, 2008. All other parts of Rule 2821 approved in SR-NASD-2004-183 will become effective as scheduled on May 5, 2008.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>3</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The rule change will promote investor protection because it will allow firms to

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<sup>3</sup> 15 U.S.C. 78o-3(b)(6).

better prepare procedures and systems to implement Rule 2821(c) and will allow FINRA to more fully consider the new comments discussed above.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>4</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5a. The text of the rule changes approved pursuant to SR-NASD-2004-183 that will become effective on May 5, 2008.

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<sup>4</sup> 15 U.S.C. 78s(b)(2).

Exhibit 5b. The text of the rule changes approved pursuant to SR-NASD-2004-183 that FINRA proposes to become effective on August 4, 2008.

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-FINRA-2007-040)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Delay Implementation of Certain FINRA Rule Changes Approved in SR-NASD-2004-183

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to delay the effective date of certain FINRA rule changes approved in SR-NASD-2004-183 until August 4, 2008.

There are no new changes proposed to the text of the FINRA rules. Attached as Exhibit 5a is the text of paragraphs (a), (b), (d), and (e) of Rule 2821, approved pursuant to SR-NASD-2004-183, which will become effective on May 5, 2008. Attached as Exhibit 5b is the text of paragraph (c) of Rule 2821, also approved pursuant to SR-NASD-2004-183, which FINRA is proposing to become effective on August 4, 2008.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

1. Purpose

On September 7, 2007, the Commission noticed the filing of Amendment Nos. 3 and 4 and granted accelerated approval of SR-NASD-2004-183, FINRA's new NASD Rule 2821, regarding broker-dealers' compliance and supervisory responsibilities for deferred variable annuities.<sup>3</sup> On November 6, 2007, FINRA published Regulatory Notice 07-53, which announced the Commission's approval of Rule 2821 (SR-NASD-2004-183) and established May 5, 2008 as the rule's effective date. Following SEC approval of the rule and publication of the Regulatory Notice, several firms requested that the effective date of the approved rule be delayed to allow firms additional time to make necessary systems changes. In addition, some firms raised various concerns regarding paragraph (c) of Rule 2821 (Principal Review and Approval), which had been substantially changed by Amendment No. 4.

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<sup>3</sup> See SEC Order Approving FINRA's NASD Rule 2821 Regarding Members' Responsibilities for Deferred Variable Annuities (Approval Order), Securities Exchange Act Release No. 56375 (September 7, 2007), 72 FR 52403 (September 13, 2007) (SR-NASD-2004-183); SEC Corrective Order, Securities Exchange Act Release No. 56375A (September 14, 2007), 72 FR 53612 (September 19, 2007) (SR-NASD-2004-183) (correcting the rule's effective date).

Rule 2821(c), in part, requires principal review and approval “[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.” A number of firms asserted that seven business days beginning from the time when the customer signs the application may not allow for a thorough principal review in all cases. These firms have asked that a different timing mechanism be used.

Rule 2821(c) also states that a principal must treat “all transactions as if they have been recommended for purposes of this principal review,” and may only approve the transaction if he or she determines “that there is a reasonable basis to believe that the transaction would be suitable based on the factors delineated in paragraph (b) of this Rule.” A principal who determines that the transaction is unsuitable nonetheless may authorize the processing of the transaction if the principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the principal found it to be unsuitable, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity. Some firms questioned 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 this provision.

Finally, in Regulatory Notice 07-53, FINRA stated that Rule 2821(c) does not permit the depositing of a customer’s funds in an account at the insurance company prior to completion of principal review. In response to the Regulatory Notice, a number of firms explained that insurers’ financial controls regarding the receipt of money from customers often include holding such funds in a general “suspense” account at the

insurer. According to these firms, insurers use an identifier to track money held in the suspense account and, if a contract is not issued, the funds are promptly returned to the customers. The firms further stated that this process has been used for many years without complications, makes processing much more efficient and effective, and receives significant scrutiny by examiners from the SEC and state insurance departments. Accordingly, these firms asked that insurers be allowed to deposit customer funds in suspense accounts under certain circumstances.

In light of these concerns, among others, FINRA staff believes it is prudent to give further consideration to paragraph (c) of Rule 2821 and the interpretation addressed in the Regulatory Notice to determine whether certain unintended and harmful consequences might ensue upon the currently scheduled effective date of May 5, 2008. If, based on this review, FINRA concludes that further rulemaking is warranted, FINRA will file a separate rule change with the Commission.

To provide adequate time for firms to make systems changes and for FINRA to consider and potentially act upon the concerns discussed above, FINRA is proposing that the effective date of paragraph (c) of Rule 2821, approved in SR-NASD-2004-183, be delayed until August 4, 2008. All other parts of Rule 2821 approved in SR-NASD-2004-183 will become effective as scheduled on May 5, 2008.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

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<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade, and, in general, to protect investors and the public interest. The rule change will promote investor protection because it will allow firms to better prepare procedures and systems to implement Rule 2821(c) and will allow FINRA to more fully consider the new comments discussed above.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2007-040 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-FINRA-2007-040 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Nancy M. Morris

Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5a**

Below is the text of those rule changes approved pursuant to SR-NASD-2004-183 that become effective on May 5, 2008.

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**2821. Members' Responsibilities Regarding Deferred Variable Annuities**

**(a) General Considerations**

**(1) Application**

This Rule applies to the purchase or exchange of a deferred variable annuity and the subaccount allocations. This Rule does not apply to reallocations of subaccounts made or to funds paid after the initial purchase or exchange of a deferred variable annuity. This Rule also does not apply to deferred variable annuity transactions made in connection with any tax-qualified, employer-sponsored retirement or benefit plan that either is defined as a "qualified plan" under Section 3(a)(12)(C) of the Securities Exchange Act of 1934 or meets the requirements of Internal Revenue Code Sections 403(b), 457(b), or 457(f), unless, in the case of any such plan, a member or person associated with a member makes recommendations to an individual plan participant regarding a deferred variable annuity, in which case the Rule would apply as to the individual plan participant to whom the member or person associated with the member makes such recommendations.

**(2) Creation, Storage, and Transmission of Documents**

For purposes of this Rule, documents may be created, stored, and transmitted in electronic or paper form, and signatures may be evidenced in electronic or other written form.

**(3) Definitions**

For purposes of this Rule, the term “registered principal” shall mean a person registered as a General Securities Sales Supervisor (Series 9/10), a General Securities Principal (Series 24), or an Investment Company Products/Variable Contracts Principal (Series 26), as applicable.

**(b) Recommendation Requirements**

(1) No member or person associated with a member shall recommend to any customer the purchase or exchange of a deferred variable annuity unless such member or person associated with a member has a reasonable basis to believe

(A) that the transaction is suitable in accordance with Rule 2310 and, in particular, that there is a reasonable basis to believe that

(i) the customer has been informed, in general terms, of various features of deferred variable annuities, such as the potential surrender period and surrender charge; potential tax penalty if customers sell or redeem deferred variable annuities before reaching the age of 59½; mortality and expense fees; investment advisory fees; potential charges for and features of riders; the insurance and investment components of deferred variable annuities; and market risk;

(ii) the customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit; and

(iii) the particular deferred variable annuity as a whole, the

underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by subparagraph (b)(2) of this Rule; and

(B) in the case of an exchange of a deferred variable annuity, the exchange also is consistent with the suitability determination required by subparagraph (b)(1)(A) of this Rule, taking into consideration whether

(i) the customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);

(ii) the customer would benefit from product enhancements and improvements; and

(iii) the customer's account has had another deferred variable annuity exchange within the preceding 36 months.

The determinations required by this paragraph shall be documented and signed by the associated person recommending the transaction.

(2) Prior to recommending the purchase or exchange of a deferred variable annuity, a member or person associated with a member shall make

reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, tax status, and such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers.

\* \* \* \* \*

**(d) Supervisory Procedures**

In addition to the general supervisory and recordkeeping requirements of Rules 3010, 3012, 3013, and 3110, a member must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in this Rule. The member also must (1) implement surveillance procedures to determine if any of the member's associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of this Rule, other applicable NASD rules, or the federal securities laws ("inappropriate exchanges") and (2) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges.

**(e) Training**

Members shall develop and document specific training policies or programs reasonably designed to ensure that associated persons who effect and registered

principals who review transactions in deferred variable annuities comply with the requirements of this Rule and that they understand the material features of deferred variable annuities, including those described in subparagraph (b)(1)(A)(i) of this Rule.

\* \* \* \* \*

**EXHIBIT 5b**

Below is the text of those rule changes approved pursuant to SR-NASD-2004-183 that FINRA is proposing to become effective on August 4, 2008.

\* \* \* \* \*

**2821. Members' Responsibilities Regarding Deferred Variable Annuities**

\* \* \* \* \*

**(c) Principal Review and Approval**

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, a registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity. Subject to the exception in this paragraph, and treating all transactions as if they have been recommended for purposes of this principal review, a registered principal shall approve the transaction only if the registered principal has determined that there is a reasonable basis to believe that the transaction would be suitable based on the factors delineated in paragraph (b) of this Rule. Notwithstanding the foregoing, a registered principal may authorize the processing of the transaction if the registered principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the registered principal has not approved the transaction, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity. The determinations required by this paragraph shall be documented and signed by the registered principal who reviewed and approved, rejected, or authorized the transaction.

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