

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 023

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐Exhibit 3 Sent As Paper Document ☐**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Filing to Adopt FINRA Rule 2320 (Variable Contracts of an Insurance Company) in the Consolidated
FINRA Rulebook

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization
prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date By
(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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

Add

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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

Add

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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 Sent As Paper Document

☐

Exhibit 3 - Form, Report, or Questionnaire

Add

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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 Sent As Paper Document

☐

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

Add

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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

Add

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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”),¹ 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 adopt NASD Rule 2820 (Variable Contracts of an Insurance Company) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber NASD Rule 2820 as FINRA Rule 2320 in the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Upon Commission approval and implementation of the proposed rule change, the corresponding NASD rule will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on February 11, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to adopt NASD Rule 2820 into the Consolidated FINRA Rulebook with minor changes discussed below. The proposed rule change would renumber NASD Rule 2820 as FINRA Rule 2320.

NASD Rule 2820 regulates members in connection with the sale and distribution of variable life insurance and variable annuity contracts (together, “variable contracts”). It prohibits members from participating in the offer or sale of a variable contract unless certain conditions are met. Members may not participate in the offering or sale of a variable contract on any basis other than at a value to be determined following receipt of payment in accordance with the provisions of the contract, the prospectus and the Investment Company Act. Members must promptly transmit to the issuing insurance company all contract applications and at least the portion of the purchase payment required to be credited to the contract. NASD Rule 2820 also requires selling agreements between principal underwriters of variable contracts and selling broker-dealers. Such agreements must provide that the sales commission will be returned to the issuer if the

² The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

contract is tendered for redemption within seven business days after acceptance. In addition, members may not sell variable contracts unless the insurance company promptly honors customer redemption requests in accordance with the contract, its prospectus and the Investment Company Act.

NASD Rule 2820(g) regulates member compensation in connection with the sale and distribution of variable contracts, including both cash and non-cash compensation arrangements. Generally, NASD Rule 2820(g) prohibits associated persons of a member from accepting any compensation from any person other than the member with which the person is associated. The rule contains an exception to allow arrangements where a non-member pays compensation directly to associated persons, provided that the member agrees to the arrangement, and relies on appropriate rules or guidance from the SEC that apply to the specific fact situation of the arrangement, and the relevant associated persons treat the funds as compensation.³ NASD Rule 2820(g) also prohibits associated persons from accepting securities as compensation, limits the payment or receipt of non-cash compensation (such as gifts, entertainment, training or education meetings and sales contests), and requires certain records to be kept.

³ For example, the SEC staff has issued a number of “no-action” letters permitting, among other things, associated persons of members to receive compensation for the sale of variable contract products from a licensed corporate insurance agent acting on behalf of one or more insurance companies. See First of America Brokerage Service, Inc. (Sept. 28, 1995) (noting that the staff will no longer respond to letters regarding networking agreements between registered broker-dealers, insurance companies, and insurance agencies in connection with the offer and sale of Insurance Securities unless the present novel or unusual issues); FIMCO Securities, Inc. (July 16, 1993); Traditional Equinet Corporation of New York (January 8, 1992).

The rule's non-cash compensation provision requires a member to keep records of all compensation received by the member or its associated persons from "offerors" (generally insurance companies and their affiliates), other than small gifts and entertainment permitted by the rule. Currently, this provision requires the records to include the nature of, and "if known," the value of any non-cash compensation received. FINRA proposes to modify this requirement by deleting the phrase "if known" regarding the value of non-cash compensation. The proposed change to Rule 2820 would require members to determine and keep records of the value of non-cash compensation received from offerors in all cases. This change would make the provision more consistent with the non-cash compensation recordkeeping requirements regarding public offerings of securities (FINRA Rule 5110(i)(2)) and direct participation programs (NASD Rule 2810(c)(2)).⁴ Members would be permitted to estimate the actual value of non-cash compensation for which a receipt (or similar documentation) assigning a value is not available.

The proposed rule change also would make certain non-substantive, technical changes to the rule to reflect FINRA's corporate name and the new format of the Consolidated FINRA Rulebook.

Over the past several years, variable life insurance products have continued to be of interest to members and the investing public. FINRA has noted the growth in sales

⁴ FINRA has proposed to transfer NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. See SR-FINRA-2009-016.

and popularity of variable life insurance products, and has published information, including several Notices, addressing regulatory concerns regarding these products.⁵

FINRA believes that the provisions of NASD Rule 2820 continue to be an important tool in the effective regulation of variable contracts. Accordingly, for the reasons set forth above, FINRA recommends that NASD Rule 2820 be transferred with minor changes into the Consolidated FINRA Rulebook as FINRA Rule 2320.

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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. FINRA believes that the proposed rule change will continue to allow FINRA to effectively regulate members in connection with the sale and distribution of variable contracts. The proposed rule change makes minor changes to a rule that has proven effective in meeting statutory mandates.

⁵ See, e.g., the following Notices to Members: 98-75 (SEC Approves Rule Change Relating to Non-Cash Compensation for Mutual Funds and Variable Products) (Sept. 1998); 99-103 (SEC Approves Rule Change Relating to Sales Charges for Investment Companies and Variable Contracts) (Dec. 1999); 00-44 (NASD Reminds Members of Their Responsibilities Regarding the Sale of Variable Life Insurance) (July 2000).

⁶ 15 U.S.C. 78o-3(b)(6).

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.⁷

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 5. Text of the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-023)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2320 (Variable Contracts of an Insurance Company) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² 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 adopt NASD Rule 2820 (Variable Contracts of an Insurance Company) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber NASD Rule 2820 as FINRA Rule 2320 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt NASD Rule 2820 into the Consolidated FINRA Rulebook with minor changes discussed below. The proposed rule change would renumber NASD Rule 2820 as FINRA Rule 2320.

NASD Rule 2820 regulates members in connection with the sale and distribution of variable life insurance and variable annuity contracts (together, "variable contracts"). It prohibits members from participating in the offer or sale of a variable contract unless certain conditions are met. Members may not participate in the offering or sale of a variable contract on any basis other than at a value to be determined following receipt of

³ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

payment in accordance with the provisions of the contract, the prospectus and the Investment Company Act. Members must promptly transmit to the issuing insurance company all contract applications and at least the portion of the purchase payment required to be credited to the contract. NASD Rule 2820 also requires selling agreements between principal underwriters of variable contracts and selling broker-dealers. Such agreements must provide that the sales commission will be returned to the issuer if the contract is tendered for redemption within seven business days after acceptance. In addition, members may not sell variable contracts unless the insurance company promptly honors customer redemption requests in accordance with the contract, its prospectus and the Investment Company Act.

NASD Rule 2820(g) regulates member compensation in connection with the sale and distribution of variable contracts, including both cash and non-cash compensation arrangements. Generally, NASD Rule 2820(g) prohibits associated persons of a member from accepting any compensation from any person other than the member with which the person is associated. The rule contains an exception to allow arrangements where a non-member pays compensation directly to associated persons, provided that the member agrees to the arrangement, and relies on appropriate rules or guidance from the SEC that apply to the specific fact situation of the arrangement, and the relevant associated persons treat the funds as compensation.⁴ NASD Rule 2820(g)

⁴ For example, the SEC staff has issued a number of “no-action” letters permitting, among other things, associated persons of members to receive compensation for the sale of variable contract products from a licensed corporate insurance agent acting on behalf of one or more insurance companies. See First of America Brokerage Service, Inc. (Sept. 28, 1995) (noting that the staff will no longer respond to letters regarding networking agreements between registered broker-dealers, insurance companies, and insurance agencies in connection with the offer

also prohibits associated persons from accepting securities as compensation, limits the payment or receipt of non-cash compensation (such as gifts, entertainment, training or education meetings and sales contests), and requires certain records to be kept.

The rule's non-cash compensation provision requires a member to keep records of all compensation received by the member or its associated persons from "offerors" (generally insurance companies and their affiliates), other than small gifts and entertainment permitted by the rule. Currently, this provision requires the records to include the nature of, and "if known," the value of any non-cash compensation received. FINRA proposes to modify this requirement by deleting the phrase "if known" regarding the value of non-cash compensation. The proposed change to Rule 2820 would require members to determine and keep records of the value of non-cash compensation received from offerors in all cases. This change would make the provision more consistent with the non-cash compensation recordkeeping requirements regarding public offerings of securities (FINRA Rule 5110(i)(2)) and direct participation programs (NASD Rule 2810(c)(2)).⁵ Members would be permitted to estimate the actual value of non-cash compensation for which a receipt (or similar documentation) assigning a value is not available.

and sale of Insurance Securities unless the present novel or unusual issues); FIMCO Securities, Inc. (July 16, 1993); Traditional Equinet Corporation of New York (January 8, 1992).

⁵ FINRA has proposed to transfer NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. See SR-FINRA-2009-016.

The proposed rule change also would make certain non-substantive, technical changes to the rule to reflect FINRA's corporate name and the new format of the Consolidated FINRA Rulebook.

Over the past several years, variable life insurance products have continued to be of interest to members and the investing public. FINRA has noted the growth in sales and popularity of variable life insurance products, and has published information, including several Notices, addressing regulatory concerns regarding these products.⁶

FINRA believes that the provisions of NASD Rule 2820 continue to be an important tool in the effective regulation of variable contracts. Accordingly, for the reasons set forth above, FINRA recommends that NASD Rule 2820 be transferred with minor changes into the Consolidated FINRA Rulebook as FINRA Rule 2320.

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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

⁶ See, e.g., the following Notices to Members: 98-75 (SEC Approves Rule Change Relating to Non-Cash Compensation for Mutual Funds and Variable Products) (Sept. 1998); 99-103 (SEC Approves Rule Change Relating to Sales Charges for Investment Companies and Variable Contracts) (Dec. 1999); 00-44 (NASD Reminds Members of Their Responsibilities Regarding the Sale of Variable Life Insurance) (July 2000).

⁷ 15 U.S.C. 78o-3(b)(6).

interest. FINRA believes that the proposed rule change will continue to allow FINRA to effectively regulate members in connection with the sale and distribution of variable contracts. The proposed rule change makes minor changes to a rule that has proven effective in meeting statutory mandates.

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. Please include File Number SR-FINRA-2009-023 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-023. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2009-023 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon

Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2820; NASD Rule 2820 to be Deleted in
its Entirety from the Transitional Rulebook)**

* * * * *

2000. DUTIES AND CONFLICTS

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2300. SPECIAL PRODUCTS

* * * * *

[2820]2320. Variable Contracts of an Insurance Company

(a) Application

This Rule shall apply exclusively (and in lieu of NASD Rule 2830) to the activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws.

(b) Definitions

(1) The term “purchase payment” as used throughout this Rule shall mean the consideration paid at the time of each purchase or installment for or under the variable contract.

(2) The term “variable contracts” shall mean contracts providing for benefits or values which may vary according to the investment experience of any separate or segregated account or accounts maintained by an insurance company.

(3) The terms “affiliated member,” “compensation,” “cash compensation,” “non-cash compensation” and “offeror” as used in paragraph (g[h]) of this Rule shall have the following meanings:

(A) “Affiliated Member” shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.

(B) “Compensation” shall mean cash compensation and non-cash compensation.

(C) “Cash compensation” shall mean any discount, concession, fee, service fee, commission, asset based sales charge, loan, override, or cash employee benefit received in connection with the sale and distribution of variable contracts.

(D) “Non-cash compensation” shall mean any form of compensation received in connection with the sale and distribution of variable contracts that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(E) “Offeror” shall mean an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act[of 1940]) of such entities.

(c) Receipt of Payment

No member shall participate in the offering or in the sale of a variable contract on any basis other than at a value to be determined following receipt of payment therefore in accordance with the provisions of the contract, and, if applicable, the prospectus, the Investment Company Act[of 1940] and applicable rules thereunder. Payments need not be considered as received until the contract application has been accepted by the insurance company, except that by mutual agreement it may be considered to have been received for the risk of the purchaser when actually received.

(d) Transmittal

Every member who receives applications and/or purchase payments for variable contracts shall transmit promptly to the issuer all such applications and at least that portion of the purchase payment required to be credited to the contract.

(e) Selling Agreements

No member who is a principal underwriter as defined in the Investment Company Act[of 1940] may sell variable contracts through another broker[/]-dealer unless (1) such broker[/]-dealer is a member, and (2) there is a sales agreement in effect between the parties. Such sales agreement must provide that the sales commission be returned to the issuing insurance company if the variable contract is tendered for redemption within seven business days after acceptance of the contract application.

(f) Redemption

No member shall participate in the offering or in the sale of a variable contract unless the insurance company, upon receipt of a request in proper form for partial or total redemption in accordance with the provisions of the contract undertakes to make prompt

payment of the amounts requested and payable under the contract in accordance with the terms thereof, and, if applicable, the prospectus, the Investment Company Act[of 1940] and applicable rules thereunder.

(g) Member Compensation

In connection with the sale and distribution of variable contracts:

(1) Except as described below, no associated person of a member shall accept any compensation from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(A) the arrangement is agreed to by the member;

(B) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or “no-action” letter issued by the SEC[Commission] that applies to the specific fact situation of the arrangement;

(C) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of the FINRA r[R]ules [of the Association]; and

(D) the record keeping requirement in paragraph (g)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items as described in [sub]paragraphs (g)(4)(A) and (B), a member shall maintain records of all compensation received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, and the nature and[, if known, the] value of non-cash compensation received.

(4) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Notwithstanding the provisions of paragraph (g)(1), the following non-cash compensation arrangements are permitted:

(A) Gifts that do not exceed an annual amount per person fixed periodically by FINRA [the Association]ⁱ and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the record keeping requirement in paragraph (g)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (g)(4)(D);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (g)(4)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes variable contract securities, is based on the total production of associated persons with respect to all variable contract securities distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each variable contract security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the record keeping requirement in paragraph (g)(3) is satisfied.

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in [sub]paragraph (g)(4)(D).

ⁱ The current annual amount fixed by FINRA [the Association] is \$100.