

Stan Macel
Assistant General Counsel

Direct: (202) 728-8056
Fax: (202) 728-8264

June 1, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-FINRA-2009-023 – Response to Comments

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing, a proposed rule change to adopt NASD Rule 2820 (Variable Contracts of an Insurance Company) as FINRA Rule 2320 in the Consolidated FINRA Rulebook with minor changes.¹ The Commission received one comment letter in response to the proposed rule filing.² The comment letter, while noting general approval for the proposal, expressed concern and sought clarification about one of the proposed changes regarding the rule’s non-cash compensation provision.

NASD Rule 2820’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.

¹ See Securities Exchange Act Release No. 59762 (Apr. 14, 2009), 74 FR 18269 (Apr. 21, 2009).

² Letter from Clifford E. Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan, LLP on behalf of the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, SEC, dated May 12, 2009.

The comment letter requests that FINRA confirm that it would respect a member's reasonable estimate of the value of non-cash compensation. As stated in the proposed rule filing, members would be permitted to estimate the actual value of non-cash compensation for which a receipt (or similar documentation) is not available. The comment letter notes that the proposed "estimation" standard is inherently imprecise and will lead to divergent valuations regarding similar forms of non-cash compensation. Thus, the comment letter advocates, a member's estimate of value should be respected unless it is patently unreasonable.

In response, FINRA notes its belief that members would be required to use good faith when estimating the value of non-cash compensation for which a receipt (or similar documentation) is not available. While there may be some differences regarding firms' estimates of similar non-cash compensation, FINRA believes that a good faith standard will help ensure that such differences are not significant, or can be distinguished based on underlying facts and circumstances. Furthermore, as noted in the proposed rule filing, this change would make this provision consistent with the recordkeeping requirements for non-cash compensation received in connection with public offerings of securities (FINRA Rule 5110(i)(2)) and the offer or sale of direct participation programs (NASD Rule 2810(c)(2)).³

The comment letter also requests no less than 180 days to implement the proposed rule change. As stated in the proposed rule filing, 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. As stated in FINRA Information Notice 10/6/08 (Rulebook Consolidation Process; Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart), FINRA's general protocol is to announce the effective dates for new FINRA rules in Regulatory Notices that are published every other month. Each such Regulatory Notice announces the effective dates of the new FINRA rules approved by the SEC during the preceding two months. The new FINRA rules' effective dates generally are 60 days following publication of the relevant Regulatory Notice.⁴ Accordingly, assuming SEC approval of the proposed rule change in either June or July 2009, under this protocol, FINRA would announce the effective date of new FINRA Rule 2320 in a Regulatory Notice to be published on or about August 17, 2009, which would establish an effective date for the rule on or about October 19, 2009. FINRA believes that an implementation period consistent with this general protocol is adequate to implement the proposal, considering that the changes proposed are minor.

³ The Commission recently approved FINRA's proposal to adopt NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. See Securities Exchange Act Release No. 59987 (May 27, 2009).

⁴ FINRA may specify periods longer, or in extraordinary circumstances, shorter than 60 days if FINRA believes the circumstances so warrant.

Elizabeth M. Murphy

June 1, 2009

Page 3

FINRA believes that the foregoing responds to the material issues raised by the commenter to this rule filing. If you have any questions, please contact Joe Savage, Vice President and Counsel, Investment Companies Regulation, at (240) 386-4534; or me at (202) 728-8056.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Stan Macel", with a stylized flourish at the end.

Stan Macel
Assistant General Counsel