

Comments on Proposed Rule Governing the Purchase, Sale or Exchange of Deferred Variable Annuities

Thank you for the opportunity to address the above noted proposed rule. It is suggested in the request for comment that an approach to the “deferred variable annuity suitability issue” might be to limit the sale of deferred variable annuities to certain categories of investors. No product/investment is suitable for all investors. It is up to the Financial Professionals and those who supervise them to make suitability determinations and recommendations to investors based on the investor’s specific goals, risk tolerance and investment objectives. This is the reason that investors have turned to Financial Professionals for advice for decades, and the main reason that most of us are in this business. We think it is critical in maintaining a just and equitable market that we do not deny investors opportunities to invest without proper reason or cause. While variable annuities are complex investments, we don’t believe that the complexity should be just cause for denying investors the right to invest. We do believe that a “plain English” disclosure form of some sort in addition to the prospectus and the explanations by a properly trained Financial Professional is imperative to any deferred variable annuity transaction.

We wish to address each item of the rule proposal by section.

Appropriateness/Suitability: The proposed rule would require that the Representative sign a separate document that evidences their suitability determination. While this is a useful tool and an exercise that Representatives should go through, requiring a Representative to sign a suitability determination and submit it to the Principal for review (according to the Principal Review section in the rule proposal) won’t necessarily indicate that a proper review had or had not been done. Frankly, we think this is a great idea, however, the practicality of obtaining accurate documentation of this nature is almost impossible. It would be the tendency of Representatives to do a proper suitability review but not document that review in a cohesive manner. It seems that in all these instances a Principal would be required to contact the Representative and receive clarification and an additional suitability determination document, in order to achieve compliance with the rule proposal; even if all the other suitability indicators are in-line with the customers needs and the transaction appears to be suitable.

As a solution we suggest that a properly trained principal will be able to detect when further evidence or documentation regarding the suitability of a deferred variable annuity transaction is required and request that documentation from the Representative. At this point, the Firm’s Written Supervisory Procedures could require that the Representative sign his/her suitability determination. For example, a Representative is already required by several rules to provide information regarding a customers’ financial position, employment, investment objectives and date of birth. If John Q. Rep submits a variable annuity to the Principal for review and the principal sees that the customer is 85 years old and has a \$10,000 net worth and they are putting \$8,000 into their variable annuity, at this point the Principal would communicate with the Representative and discuss suitability. The Principal could either reject the transaction, require the Representative to provide a suitability determination document or both.

Disclosure and Prospectus Delivery: The proposed rule would required that the Representative provide a prospectus and a brief, and easy-to-read (written in “plain English”) risk disclosure document that highlights the main features of the particular variable annuity transaction. Again, we do agree that a “plain English” disclosure form should be provided but one that is general to all variable annuity purchases and that clearly states that specific information regarding their VA purchase can be found in the prospectus. We have attached a sample of just such a form just to give you an idea. It is important that we don’t detract customers from reading the prospectus by providing the specific information on a form. One would think that if the specific information is provided on the form, then the customer is not only less likely to read the prospectus, but the form is also more likely to be inaccurate, or incomplete. Firms who do a moderate to large amount of business in variable annuities would almost be required to have additional staff to keep up with all the different features, expenses and changes of variable products, to insure the information provided on the form is accurate.

We don’t believe that it is necessary to disclose to customers that VA contracts are accepted subject to review and approval by a designated registered principal. Principals have long since been able to “reject” or “bust” a transaction if they believe that transaction to be unsuitable for the client. If we must disclose this fact to the purchasers of variable annuities, must we also disclose this fact to purchasers of mutual funds, or individual stocks, or all other investments?

Principal Review: We agree with the “one day” rule because of the expenses and potential issues relating to the “free look” periods with variable annuities, a prompt review is necessary, especially when a switch or a 1035 exchange is involved. Another part of the Principal review is the “things” a Principal looks at. We do think that a Principal should be required to take into consideration whether the money invested makes up a large portion of their net worth. We also believe that the Firm should be able to have internal guidelines as far as percentages and should be able to train their Principals to use their judgment in administering these guidelines. Also, a Firm should have procedures in place that indicate what is to be done when a customer appears to be heavily concentrated in variable products. Further, the NASD might want to consider adding to the items that a Principal should review, the reasons a person is suitable for a variable annuity including the need for the death benefit feature (since that is one of the biggest expenses) and the eventual life time income payments an annuity can provide once annuitized. Also a Principal should consider when a customer is replacing a variable contract, the amount of death benefit that they are potentially losing.

We would agree with the NASDs rationale that members are in a better position to determine appropriate standards for Principal review based on their particular business models, salespeople and customers. However, the NASD may want to provide further guidance on the things a Principal should review as noted in the above paragraph.

Thank you again for this opportunity to comment.

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