SEC Approves FINRA’s Variable Annuities Rule

The SEC announced on Monday September 10, 2007, that it has approved a new Financial Industry Regulatory Authority (FINRA) rule designed specifically to address broker-dealers’ sales practices regarding purchases and exchanges of deferred variable annuities.

New Rule 2821:

• imposes a specific suitability obligation for the sale or exchange of deferred variable annuities;
• establishes standards for principal review and requires principals to review transactions before the customer’s application is forwarded to the issuing insurance company for processing;
• requires firms to establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the rule; and
• requires firms to develop and document specific training policies or programs designed to ensure (i) compliance with the rule, and (ii) salespersons’ understanding of the material features of deferred variable annuities.

The SEC release did not contain an effective date or a compliance date; however, it approved the rule on an accelerated basis. Accordingly, firms are not likely to have long to address the new requirements. At a minimum, firms should promptly:

• revise their WSPs to address the sales practice, principal review and supervision requirements of the new rule;
• identify the principal(s) responsible for reviewing purchases and exchanges;
• develop training materials regarding variable annuities and the requirements of the new rule;
• establish a schedule for compliance training; and
• develop a system for maintaining adequate records demonstrating compliance with the rule.
New rule 2821 applies to sales of deferred variable annuities to all investors, not just to seniors. The SEC has been clear, however, that sales practices directed at senior investors will continue to be a focus and that it believes this to be a first step toward addressing perceived problems in this area.

In light of the new requirement regarding principal review, the SEC simultaneously issued an exemptive order allowing FINRA members to hold customer funds for no more than seven business days while completing the principal review without (i) becoming fully subject to Exchange Act Rule 15c3-3, and (ii) being required to maintain higher levels of net capital in accordance with Rule 15c3-1.

The SEC release approving the proposed FINRA rule:

The SEC’s order granting exemptions from Rules 15c3-1 and 15c3-3 under the Securities Exchange Act of 1934:
If you have any questions or would like additional information, please contact your Alston & Bird attorney or any one of the following in the Investment Products & Services Group.

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