



SEC Approves Conditional Exemption for Broker-Dealers from Requirements of Rules 15c3-1 and 15c3-3

September 18, 2007

Effective September 7, 2007, the Securities and Exchange Commission approved new Financial Industry Regulatory Authority (FINRA) Rule 2821. This Rule sets forth recommendation requirements (including a suitability obligation), principal review and security requirements, and supervisory and training requirements with respect to transactions in deferred variable annuities. One component of the Rule provides that, before transmitting a customer's application to the issuing insurance company, but no later than seven business days after the customer signs the application, a registered principal must review and approve the purchase or exchange of the deferred variable annuity.

This Rule presents a conflict for many broker-dealers who are subject to the lower net capital requirements under SEC Rule 15c3-1 and are exempt from the requirement to establish and fund a customer reserve account under Rule 15c3-3 because they do not carry customer funds or securities. Under these Rules, broker-dealers who receive checks from customers made payable to third parties are not deemed to be carrying customer funds if they transmit such third-party checks no later than noon of the next business day after the receipt of such funds or securities. A broker-dealer may need to hold customer checks for more than one business day in order to comply with new Rule 2821.

The SEC Order will exempt broker-dealers from any additional requirements of Rules

15c3-1 and 15c3-3 due solely to a failure to promptly transmit a check made payable to an insurance company for the purchase of a deferred variable annuity by noon of the next business day, provided that: (i) the principal review and approval requirements of Rule 2821 are satisfied, (ii) the broker-dealer transmits the check no later than noon of the next business day following the date of such principal approval, and (iii) the broker-dealer maintains a copy of such check and creates a record of the date the check was received by the customer and transmitted to the insurance company or returned to the customer.

Important Point — The order provides technical, but very meaningful, relief for broker-dealers who would otherwise be subject to higher capital and reserve requirements solely as a result of their compliance with new Rule 2821 in connection with their deferred variable annuity sales programs.

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