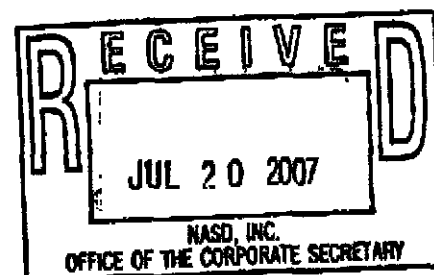


**PFG Distribution Company**

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July 19, 2007

Barbara Z. Sweeney
NASD
Senior Vice President and Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1500



**Re: NASD Notice to Members 07-27
Member Private Offerings;
NASD Requests Comment on Proposed Rule 2721 to
Regulate Member Private Securities Offerings**

Dear Ms. Sweeney:

PFG Distribution Company ("PFG") and AGL Life Assurance Company ("AGL") are submitting this comment letter in response to the request for comments made by the NASD in Notice to Members 07-27 ("NTM") with respect to Proposed Rule 2721 ("Proposed Rule") pertaining to private placements of unregistered securities issued by an NASD member ("Member Private Offerings" or "MPOs"), as the terms Member Private Offerings and MPOs are used in the NTM.

PFG and AGL appreciate the opportunity to comment on the Proposed Rule. PFG is an NASD member firm. PFG currently conducts two types of business: (1) Broker or dealer selling variable life insurance or annuities; and (2) Other: Distributes variable annuity and variable life contracts on a private placement basis. AGL is an affiliate of PFG. As part of its business, PFG engages in the sale of AGL variable life insurance and annuity products. These life insurance and annuity products are offered and sold without registration under the Securities Act of 1933, as amended (the "Securities Act") pursuant to exemptions provided in the Securities Act and Regulation D promulgated thereunder. AGL is a life insurance company subject to the supervision and principal regulatory jurisdiction of the Pennsylvania Department of Insurance and is subject to regulation by insurance departments of those other states in which AGL issues life insurance and annuity products.

PFG and AGL submit that the Proposed Rule should not apply to private placements of variable life insurance and variable annuity products issued by a member or member affiliate or a "control entity" of a member. Further, the definition of "control entity" should exclude insurance companies, insurance company separate accounts and "Offerors" as the term "Offerors" is defined in Rule 2820.

As drafted, the Proposed Rule appears to apply to all private placement offerings of variable life insurance and annuity products by AGL, in its capacity as a "control entity" of PFG. However, the required contents of the disclosure document ("Disclosure Document") that accompany AGL's private placement offerings of these products are already addressed in Regulation D. More importantly, the contents of such Disclosure Document, as well as the contents and operation of the variable life insurance and annuity products issued by AGL pursuant to such Disclosure Document, are comprehensively regulated under applicable state insurance laws.

Under these circumstances, PFG and AGL believe that adoption of the Proposed Rule without the modifications requested herein will add significantly to the regulatory burden of members and member affiliates, such as PFG and AGL, without providing protection to investors beyond that already made available under federal securities laws and state insurance laws.

Life insurance companies are highly regulated entities that are subject to supervision and complete oversight by state insurance departments. To cite just one example, the permissible investments that may be made by an insurance company, both for its own account and on behalf of life insurance and annuity contracts issued by the company, are thoroughly regulated under state insurance laws.

Life insurance companies are required to file detailed, periodic statements of their operations and financial condition with the insurance regulators of all states in which such companies do business. These filings are publicly available.

Additionally, the terms of the life insurance and annuity products issued by insurance companies are subject to comprehensive regulation by state insurance departments. Many provisions of life insurance and annuity contracts are mandated by state insurance codes, or are subject to independent review and approval by state insurance regulators.

Moreover, the uses of the premiums received by the insurance company upon issuance of a variable life insurance or annuity contract are limited by applicable state insurance laws. All premium received, net of applicable charges payable under the contract must be allocated by the issuing insurance company to its separate account containing the investment options available under the contract. Similarly, the charges that an insurance company may assess in connection with a variable life insurance or annuity contract are either directly specified by state insurance statutes or are subject to limits set forth in these statutes (such as distribution charges.) Under these circumstances, the requirement on "use of proceeds" contained in the Proposed Rule are, at best, duplicative of existing state insurance laws, and are conceivably in conflict with such laws.

Further, the offer and sale of variable life insurance and annuity products by NASD member firms are already regulated by the NASD. The offer and sale of variable life insurance and annuity products are addressed in the Rules and are the subject of a number of Notices to Members and Interpretive Memoranda. (Currently, the NASD web site

posts 16 links to Notices to Members in connection with Rule 2820 – Variable Contracts of an Insurance Company.) In addition, as noted above, purchasers of life insurance and annuity products already have access to copious amounts of information about the issuer insurance company and its products through the publicly available filings made by such company with state insurance regulators.

According to the NTM, the Proposed Rule is intended to provide investor protections with respect to private offerings by a member that are parallel to the protections provided by Rule 2720 with respect to a member's public offerings. Rule 2720 expressly carves out insurance company separate accounts and registered investment companies from the definition of "affiliate" for purposes of Rule 2720. Accordingly, a similar exclusion from "control entity" should apply to insurance company separate accounts and insurance company issuers.

Definitions

PFG and AGL request the addition of a new Section (3) under Paragraph (a) Definitions, of the Proposed Rule:

(a) Definitions

...

(3) Exclusions to the Definition of Control Entity

None of the following shall be considered a "control entity" for purposes of this Rule:

- (1) an "insurance company" as defined in Section 2(a)(17) of the Investment Company Act of 1940, as amended;
- (2) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended; and
- (3) an "Offeror" as defined in Rule 2820.

Proposed Exemptions

The Proposed Rule includes several exemptions, including MPOs sold to institutional accounts (as defined in NASD Rule 3110(c)(4)) and qualified purchasers (as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940). In order to maintain consistency with the intent and provisions of Section 4(2) of the Securities Act and Regulation D thereunder, Rule 2721 should also exempt MPOs offered and sold to accredited investors (as defined in Rule 501(a) of Regulation D). Further, for the reasons described herein, the Proposed Rule should also exempt offerings sold to purchasers and proposed purchasers of variable contracts (as defined in Rule 2820).

PFG and AGL request the addition of new subparagraphs (G) and (H) to Section (e)(1) of the Proposed Rule:

(e) Exemptions

The following Member Private Offerings are exempt from the requirements of this Rule:

- (1) offerings sold solely to:

...

(G) an "accredited investor" as defined in Section 501(a) of Regulation D of the Securities Act of 1933, as amended;

(H) purchasers and proposed purchasers of "variable contracts" as defined in Rule 2820.

Proposed Rule 2721 would exempt certain types of offerings from the Proposed Rule. PFG and AGL request the addition of new paragraphs (9) through (12) to Section (e) of the Proposed Rule:

(e) Exemptions

The following Member Private Offerings are exempt from the requirements of this Rule:

...

(9) offerings made pursuant to Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act");

(10) offerings made pursuant to or in reliance on Regulation D under the Securities Act;

(11) offerings of "variable contracts" as defined in Rule 2820;

(12) offerings of exempted securities as defined in Section 3(a)(8) of the Securities Act.

Offerings by Members or a Control Entity

According to the NTM, the Proposed Rule would establish disclosure and filing requirements and limits on offering expenses for private placements by members of their own securities or those of a "control entity." A "control entity" for purposes of the Proposed Rule is defined as an entity that controls, is controlled by or is under common control with a member or its associated persons. The term "control" for purposes of the Proposed Rule is determined based on beneficial ownership of more than 50 percent of the outstanding voting securities of a corporation, or the right to more than 50 percent of the distributable profits or losses of a partnership. The NTM further provides that the power to direct the management or policies of a corporation or partnership alone - absent the majority ownership or the right to a majority of profits - would not constitute "control" for purposes of the "control entity" definition in the Proposed Rule.

As proposed, Rule 2721 could conceivably apply to offerings of unregistered securities made by a "control entity" of a member even if the member did not directly sell or distribute such securities. Under the circumstances, the NASD could be viewed as attempting to regulate an issuer over which it has no regulatory authority. For example, assume that ABC Insurance Company ("ABC") issues variable annuity and insurance products that are exempt from registration pursuant to the Securities Act and Regulation D. ABC has entered into a principal underwriting agreement wherein it authorizes its affiliated broker dealer ("Affiliated Broker Dealer") to enter into selling agreements with non-affiliated broker dealers to sell the variable products of ABC, pursuant to Rule 2820(e). Subsequently, ABC offers and sells a variable annuity product to an accredited investor. The insurance agent that sold the variable annuity product is registered with a broker dealer that is not affiliated with ABC. Under the facts presented, the Affiliated Broker Dealer did not issue unregistered securities. Under the Proposed Rule, a member or associated person may not participate in a Member Private Offering unless a private placement memorandum ("PPM") is provided to each investor and the PPM contains specific disclosure items. However, since no definition has been assigned to the term "participation" under the Proposed Rule, it is unclear whether the Unaffiliated Broker Dealer that did not issue unregistered securities would be subject to the Proposed Rule.

Should the NASD decline to adopt the exclusions to the definition of control entity and the additional MPO exemptions requested herein, PFG and AGL are requesting that the NASD clarify the Proposed Rule to specifically define "participation" and reflect that the disclosure requirements only apply if the member or associated person directly sells or distributes the MPO to the purchaser and that the disclosure requirements do not apply to a member or associated person that indirectly offers and sells the MPO through an underwriting agreement.

Disclosure and Filing Requirements

The Proposed Rule would require members to provide each investor in an MPO (whether accredited or unaccredited) with a PPM that includes certain information. The disclosure of such information to accredited investors is not currently required under the Securities

Act or Regulation D. See Section 502(b) of Regulation D. The NASD recognizes and acknowledges that "SEC Regulation D does not require disclosure documents to be prepared or provided in offerings made solely to accredited investors." See Endnote 4 of the NTM.

The Proposed Rule would require the members to file the PPM with NASD at or prior to the first time that the PPM is provided to any investor. In addition, any amendment or exhibit to the PPM would be required to be filed with NASD under the Proposed Rule. Neither Section 4(2) of the Securities Act nor Regulation D requires that issuers file a PPM, exhibit to the PPM or amendment to the PPM with the SEC, in a sale made to accredited investors. The NASD recognizes and acknowledges that "SEC Regulation D does not require disclosure documents to be prepared or provided in offerings made solely to accredited investors." See Endnote 4 of the NTM.

Regulation D and private placements have been the subject of recent discussion, new rule releases and proposed rule changes by the Securities and Exchange Commission ("SEC") (SEC Proposed Release No. 33-8814 – Electronic Filing and Simplification of Form D; Release No. 33-8766 – Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles; and SEC Proposed Release No. IA -2266 – Registration under the Advisers Act of Certain Hedge Fund Advisers); and litigation (*Phillip Goldstein, et al. v. Securities Exchange Commission* – see August 6, 2007 statement of former SEC Chairman Christopher Cox concerning the SEC's decision not to seek en banc review of the decision of the U.S. Court of Appeals for the District of Columbia). As recently as July 11, 2007, the SEC voted to adopted a new antifraud rule under the Investment Advisers Act that clarified the SEC's ability to bring enforcement actions under the Advisers Act. The rule will apply to all investment advisers to pooled investment vehicles, regardless of whether the adviser is registered under the Advisers Act. See SEC Press Release 2007-133.

As a matter of principle, PFG and AGL support initiatives to protect investors. As noted previously, insurance companies and broker dealers are subject to a robust system of regulatory supervision and oversight. The SEC, through the rulemaking process, continues to refine these investor protection initiatives for private placement offerings. The current regime of federal securities laws and state insurance laws applicable to insurance companies and broker dealers is already in place to protect purchasers of private placement variable life insurance and annuity products. Adoption of the Proposed Rule, as drafted, could conceivably be duplicative of and in conflict with current federal securities rules and state insurance rules applicable to these types of products.

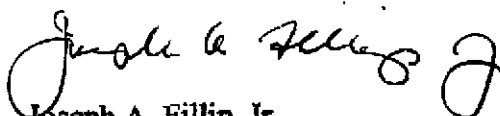
Conclusion

PFG and AGL submit that the Proposed Rule should not apply to private placements of variable life insurance and variable annuity products issued by a member or member affiliate or a "control entity" of a member. The definition of "control entity" should exclude insurance companies and insurance company separate accounts and other entities described as "Offerors" in Rule 2820. MPOs of "variable contracts" and MPOs offered

and sold to "accredited investors" should be exempted from the Proposed Rule. Offerings made pursuant to Section 4(2) of the Securities Act and offerings made in reliance on Regulation D under the Securities Act should also be exempted from the Proposed Rule.

We appreciate the opportunity to comment on the Proposed Rule and would be happy to discuss our comments further with the NASD should that be helpful.

Sincerely,



Joseph A. Phillip, Jr.
Vice President and General Counsel
PFG Distribution Company
Senior Vice President and General Counsel
AGL Life Assurance Company