

MEMO# 19054

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NASD PROPOSED NEW RULE RELATING TO TRANSACTIONS IN DEFERRED VARIABLE ANNUITIES - CONFERENCE CALL THURSDAY, AUGUST 4TH

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. URGENT/ACTION REQUESTED [19054] August 2, 2005 TO: SEC RULES COMMITTEE No. 44-05 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 6-05 RE: NASD PROPOSED NEW RULE RELATING TO TRANSACTIONS IN DEFERRED VARIABLE ANNUITIES - CONFERENCE CALL THURSDAY, AUGUST 4TH The Securities and Exchange Commission recently published a revised version of the NASD's proposal to create a rule specifically covering deferred variable annuities.¹ NASD's proposed new Rule 2821 would impose recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements tailored specifically to transactions in deferred variable annuities. The rule is intended to address a number of problem areas uncovered by NASD and SEC examinations, including areas relating to suitability, disclosure, supervision, books/records and training. Comments on the proposal are due no later than Thursday, August 11th. We will hold a conference call this Thursday, August 4th at 2:00 pm, Eastern time to discuss the NASD proposal and whether the Institute should submit a comment letter. The dial-in number for the call is 800/857-5485 and the passcode is 52343. If you intend to participate on the call, please notify us by sending an email to Stephanie Holly at sholly@ici.org. If you cannot participate on the call, please provide any comments you may have on the proposal to Barry Simmons at 202/326-5923 or bsimmons@ici.org before the call, if possible. According to the SEC release, proposed Rule 2821 has four main requirements. First, the proposal has requirements governing recommendations, including a suitability obligation, specifically tailored to deferred variable annuity transactions. Second, the proposal includes various principal review and approval obligations, including a requirement that a registered principal review and approve the transaction prior to submitting a customer's application for a deferred variable annuity contract to the issuing insurance company for processing. Third, 1 See Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Filing of Proposed Rule and Amendment No. 1 Thereto Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities; Corrected, SEC Release No. 34-52046A (July 19, 2005). The NASD's release is available at <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/E5-3903.pdf>. The NASD proposal was originally published for comment in NASD Notice to Members 04-45 (June 2004), and received 1,129 comments, the overwhelming majority of

which opposed the proposal. In response, NASD modified the proposal and filed it with the SEC on December 14, 2004. On July 8, 2005, NASD filed with the SEC Amendment No. 1 to the proposed rule, for which the SEC is currently soliciting comment. 2 NASD members would be required to establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in the proposed rule. Finally, the proposal has a training component that obligates NASD members to develop and document specific training policies or programs designed to ensure that associated persons who effect, and registered principals who review, transactions in deferred variable annuities comply with the requirements of the proposal and that they understand the material features of deferred variable annuities. Barry E. Simmons
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