

MEMO# 2913

July 3, 1991

OUTCOME OF NASAA INVESTMENT COMPANY MEETING

July 3, 1991 TO: CONTRACTUAL PLANS COMMITTEE NO. 8-91 RE: OUTCOME OF NASAA INVESTMENT COMPANY MEETING

As you know, the NASAA Investment Company Registration/ Trading Practices Committee ("Committee") met on Saturday, June 29th in Boston to solicit industry input regarding the Committee's proposed recommendations with respect to state regulation of contractual plans. (See Memorandum to Contractual Plans Committee No. 7-91, dated June 26, 1991.) The Committee indicated that it would be finalizing its report and recommendations after the open portion of the meeting. The proposed recommendations would be in the form of NASAA Guidelines ("Guidelines") and submitted to the NASAA Board of Directors for approval. After approval by the NASAA Board, the proposed Guidelines would be published for public comment and submitted to NASAA membership for adoption and approval at the NASAA Fall Conference in October. It is the Committee's belief that if the proposed Guidelines are adopted by NASAA membership, it will be unnecessary for each state to formally adopt the Guidelines. Thus, it is possible that the Guidelines could be effective immediately upon adoption, or shortly thereafter. Proposals Considered by the Committee

The initial proposals discussed by the Committee were very similar to the amended proposed administrative rules issued by the New Mexico Securities Division earlier this year, i.e., requiring a refund of all sales loads in excess of 15% at any time to an investor, requiring execution of a specified disclosure document by the investor, requiring that all proceeds of a contractual plan investment be placed in a dedicated fund and requiring the investment objective of the underlying portfolio to be long term capital growth. (See Memorandum to Contractual Plan Committee No. 1-91, dated January 24, 1991.) The Institute strongly opposed the proposal that would permit any investor surrendering at any time to receive a refund of all sales loads in excess of 15% of payments as being 1*/ The Committee stated it was basing this particular recommendation on action recently taken by the state of Washington. Apparently, one plan sponsor agreed to this refund provision as a condition of registration. unnecessary for the protection of investors and a disruption of the careful balancing of interests that was devised by Congress when amending Section 27 of the 1940 Act in 1970. 1*/ The Institute further stated that the Committee should focus its efforts on correcting existing sales practice abuses rather than recommending provisions directly in conflict with the federal regulatory structure. The Institute also reiterated its opposition to the Committee's initial proposals for the reasons set forth in its comment letter to the New Mexico Securities Division. (See Memorandum to Contractual Plans Committee No. 2- 91, dated March 1, 1991.) In addition to the foregoing, the Committee proposed the following: 1. Creation of an "Accredited Investor" Definition - This proposal would permit certain "accredited investors" to continue to be regulated under the federal regulatory provisions. The definition of accredited investor would be tied to military rank

and a minimum monthly investment of \$275. A similar definition would be created for civilians. Non-accredited investors would be subject to the NASAA Guidelines. 2. Persistency - This proposal would subject a fund to disparate regulatory schemes based upon persistency in each state. For example, funds with persistency figures above a certain percentage would fall within the federal guidelines; however, funds below that particular percentage would be subject to the NASAA Guidelines. 3. Automatic Liquidation of Accounts - This proposal would provide automatic liquidation of an investor's account if the investor failed to affirmatively notify the fund of the investor's intent to continue with the plan after receipt of the 27(e) notice. 4. Prohibited Communications - This would prohibit the agent from contacting an investor for thirty days prior to the expiration of the investor's right to surrender the plan certificate and receive a refund of the sales load in excess of 15%. 5. Mandatory Notification to All Investors of Refund Rights - This would require that plan sponsors send the 27(d) notice to all investors, regardless of whether the investor had missed a payment during the first 18 months of the plan. 6. Limiting Sales Commission to 9% Per Payment - This proposal is similar to the restrictions currently in effect in California and Wisconsin and would effectively prohibit the sale of all contractual plans in the states. After a spirited discussion with respect to the merits of each of the foregoing proposals, an additional proposal (offered by the distributor of several contractual plans) was also considered by the Committee. This proposal would extend the refund provision from the current 18 months to 30 months; thus, investors would be entitled to receive a refund of any sales load in excess of 15% for the first 30 months of the plan. Likely Committee Recommendations Based upon the discussion regarding each of the proposals during the meeting, the Institute believes that the following provisions will be included in the Committee's report and proposed Guidelines: 1. all proceeds of a plan investment must be placed in a dedicated fund; 2. the underlying fund must have an investment objective of long term capital growth; 3. a disclosure document must be executed by the investor at the time of sale; 4. all investors must receive notice of his/her refund rights; 5. an investor will be entitled to receive a refund of any sales load in excess of 15% for 30 [36] months; 6. submission of persistency figures by each plan sponsor on an annual basis; and 7. application of "suitability" standards to contractual plan investors. It is expected that the Committee will have its report and proposed Guidelines finalized by the end of July. We will distribute the Committee's report as soon as it becomes available. Patricia Louie Assistant General Counsel