

MEMO# 20184

July 17, 2006

Draft Institute Letter on NASD Proposal Relating to Deferred Variable Annuities

©2006 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. [20184] July 17, 2006 TO: SEC RULES COMMITTEE No. 32-06 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 7-06 RE: DRAFT INSTITUTE LETTER ON NASD PROPOSAL RELATING TO DEFERRED VARIABLE ANNUITIES As we previously informed you,¹ the Securities and Exchange Commission has published for comment an amendment to a proposed rule change filed by NASD relating to sales practice standards and supervisory requirements for transactions in deferred variable annuities.² The Institute has prepared a draft comment letter on the proposal. The most significant aspects of the draft letter are summarized below and a copy of the draft letter is attached. Comments on the proposal must be received by the SEC no later than July 19. If you have any comments on the Institute's draft letter, please contact the undersigned by phone at 202-371- 5408 or by e-mail at aburstein@ici.org. The draft letter reiterates the Institute's support for the goal of NASD's proposed Rule 2821 -- to address problems relating to sales practices in the area of deferred variable annuities. Nevertheless, the draft letter states that the Institute continues to believe that NASD's proposed approach sets a bad precedent and may prove unworkable. Most significantly, the draft letter states that by establishing a one-size-fits-all separate regulatory framework for one particular investment product, NASD is neglecting to take into account the variety of NASD members' business models; tailoring a rule for a particular type of investment product could lead to the adoption of separate and distinct suitability rules for other complex products, complicating compliance efforts of broker-dealers; and it is questionable whether a separate rule is necessary to accomplish NASD's goals. 1 Memorandum to SEC Rules Committee No. 31-06 and Variable Insurance Products Advisory Committee No. 6-06, dated July 7, 2006 [20163]. 2 SEC Release No. 34-54023 (June 21, 2006), 71 FR 36840 (June 28, 2006) ("Release"). The Release can be found on the SEC's website at <http://www.sec.gov/rules/sro/nasd/2006/34-54023.pdf>. 2 The draft letter states that the Institute is pleased that NASD, in response to comments, made several changes to the proposed requirements relating to recommendations of deferred variable annuities. The draft letter, however, continues to express concerns about the proposed principal review requirements, especially in situations where the transaction was not recommended. The draft letter therefore recommends that NASD not apply the proposed principal review requirements in such situations and, whether applied only to transactions involving a recommendation or more broadly, provide firms with flexibility to design principal review procedures that fit their particular circumstances and business models. Ari Burstein Associate Counsel Attachment (in .pdf format)

Copyright © by the 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.