

MEMO# 19078

August 9, 2005

NASD NOTICE TO MEMBERS REGARDING EQUITY-INDEXED ANNUITIES

©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. [19078] August 9, 2005 TO: SEC RULES MEMBERS No. 90-05 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 8-05 RE: NASD NOTICE TO MEMBERS REGARDING EQUITY-INDEXED ANNUITIES The NASD has issued a Notice to Members ("NTM")¹ providing formal guidance regarding sales of equity-indexed annuities ("EIAs").² Specifically, the NTM addresses the responsibility of firms to supervise the sale by their associated persons of EIAs that are not registered under the federal securities laws. The NTM states that the guidance is in response to concerns about marketing, supervision, disclosure and investor protection issues associated with EIAs. The NTM states that while some EIAs are registered with the SEC as securities, many are not, based on a determination that they are insurance products that qualify for exemption under the Securities Act of 1933. The NTM does not take a position on whether a particular EIA is a security and states that the question of whether a particular EIA is an insurance product or a security depends upon the particular facts and circumstances concerning the instrument offered or sold, and is determined on a case-by-case basis. The NTM states that due to the uncertainty as to whether a particular unregistered EIA may be a security, as well as the potential regulatory violations and investor protection issues that would arise by the marketing and sale of unregistered EIAs that are deemed to be securities, the NASD has determined to recommend several supervisory measures for firms. Specifically, firms should consider maintaining a list of acceptable unregistered EIAs and prohibiting their brokers from selling any other unregistered EIA without the firm's written confirmation that the sale is acceptable. Firms also should consider whether additional supervisory procedures would help protect the firm's customers, for example, requiring that all sales of unregistered EIAs are processed through the firm. Finally, firms should provide brokers selling any unregistered EIA through the firm with the proper training to ensure they understand the EIA's features and the extent to which the EIA meets the needs of a particular customer. 1 NASD Notice to Members No. 05-50 (August 2005). The Notice to Members can be found on the NASD's website at http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_014821.pdf. 2 Equity-indexed annuities are financial instruments in which the issuer, usually an insurance company, guarantees a stated interest rate and some protection from loss of principal, and provides an opportunity to earn additional interest based on the performance of a securities market index. 2 customer. The NTM reminds firms that under any circumstances, NASD suitability rules apply to any recommendation that a customer liquidate or surrender a registered security for the purpose of purchasing an unregistered EIA. Ari Burstein Associate Counsel

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