

MEMO# 19176

September 20, 2005

INSTITUTE LETTER ON NASD DEFERRED VARIABLE ANNUITY PROPOSAL

©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. [19176] September 20, 2005 TO: SEC RULES MEMBERS No. 104-05 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 10-05 RE: INSTITUTE LETTER ON NASD DEFERRED VARIABLE ANNUITY PROPOSAL The Institute has filed a comment letter with the Securities and Exchange Commission regarding the NASD's proposed new Rule 2821 relating to transactions in deferred variable annuities. The final letter is attached, and it is summarized below. COMMENTS ON GENERAL APPROACH The Institute's letter supports NASD's goal of ensuring that deferred variable annuities are sold only to investors for whom they are suitable. It expresses concern, however, that a product-specific suitability rule could lead to the adoption of separate and distinct suitability rules for other complex products. This could result in a patchwork of standards that will complicate broker-dealer compliance efforts, without providing any clear benefit to shareholders. The letter states that NASD's concern about "questionable practices" relating to the sale of deferred variable annuities are better addressed by NASD member firm compliance programs and NASD enforcement efforts. The letter also urges NASD, with industry assistance and input, to update its previous guidance on suitability issues for variable annuity contracts. COMMENTS ON SPECIFIC RULE PROVISIONS The Institute's letter comments on specific provisions in the rule, in the event that NASD issues updated guidance or goes forward with its rule proposal. In particular, the letter describes concerns raised by the proposed provision that requires broker-dealers recommending a deferred variable annuity to compare it with other investment vehicles. It explains that the requirement: (i) could require comparison with an unlimited number of investment vehicles; (ii) is unreasonable and impractical to the extent that it requires firms to make comparisons with products they do not distribute; and (iii) could be difficult, if not impossible, for many broker-dealers to implement. The letter also takes issue with the proposed provision that requires a registered principal to review each purchase or exchange of a deferred variable annuity, even where the 2 transaction has not been recommended by an associated person of the broker-dealer. It notes that the requirement: (i) contradicts the notion that investors may be able to make informed investment decisions on their own; (ii) contemplates a traditional platform involving face-to-face communications between full-service broker-dealers and their customers, which is not a platform used by all broker-dealers in today's marketplace; and (iii) is overly detailed and prescriptive and would require the principal to replicate what a registered representative has already done. The letter notes that if this provision is adopted it should be modified to: (i) provide firms with flexibility to design principal review procedures that fit their particular circumstances and business models, rather than prescribing a laundry list of items that a registered representative must

consider; and (ii) permit firms to conduct a principal review before the contract is issued (i.e., before the contract is sent to the investor). Barry E. Simmons Associate Counsel Attachment (in pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 19176, or call the ICI Library at (202) 326-8304 and request the attachment for memo 19176.

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