

MEMO# 18593

February 25, 2005

INSTITUTE SEEKS INTERPRETIVE GUIDANCE FROM NASD ON APPLICATION OF NASD CONDUCT RULES TO DEFAULT IRA ACCOUNTS

[18593] February 25, 2005 TO: PENSION COMMITTEE No. 7-05 CHIEF COMPLIANCE OFFICER COMMITTEE No. 19-05 SEC RULES COMMITTEE No. 17-05 RE: INSTITUTE SEEKS INTERPRETIVE GUIDANCE FROM NASD ON APPLICATION OF NASD CONDUCT RULES TO DEFAULT IRA ACCOUNTS The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) mandated that, beginning March 28, 2005, certain distributions from a tax-qualified retirement plan must be transferred to an individual retirement plan of a designated trustee or issuer. In September 2004, the Department of Labor adopted a regulation providing a safe harbor to pension plan fiduciaries in connection with these individual retirement plan accounts, which have been referred to as "default IRA accounts." The safe harbor requires the fiduciary to comply with various conditions that are designed to protect the interests of the plan beneficiary. In anticipation of opening and maintaining default IRA accounts, Institute members that are also members of the NASD have expressed concern with their ability to comply with various provisions in the NASD Conduct Rules. These concerns stem from the fact that default IRA accounts will be opened without any express involvement of the beneficial owners of the accounts and, in opening these accounts, NASD members will likely have limited information about the owners. In response to these concerns, the Institute has sent the attached letter to the NASD seeking interpretive guidance. In particular, the Institute seeks guidance that, until such time as a default IRA account holder asserts ownership or exercises control over the account, an NASD member will not violate the following rules in connection with the opening and maintenance of a default IRA account that complies with DOL's regulation: • Conduct Rule 3110, relating to books and records – The Institute's letter seeks guidance that a member will not violate this rule if, with respect to a default IRA account holder, it cannot obtain all items of information the rule requires a broker-dealer to obtain and maintain on each of its account holders; • Conduct Rule 2510, relating to discretionary accounts – The Institute's letter seeks guidance that a member's opening and maintenance of a default IRA 2 account will not constitute the exercise of unauthorized discretionary authority in the account; • Conduct Rule 2310, relating to suitability of recommendations – The Institute's letter seeks guidance that a member's offer of a default IRA account to an employer's plan fiduciary does not constitute a recommendation by the member to each plan participant that is the beneficial owner of a default IRA account; and • Interpretive Material (IM) 2310-2(b)(4), relating to unauthorized transactions – The Institute's letter seeks guidance that a member's opening and maintenance of the account pursuant to a written agreement with a

plan sponsor in accordance with DOL's regulation does not constitute an unauthorized transaction under the NASD's rules. In light of the March 28th effectiveness date for transfers to default IRA accounts, the Institute's letter encourages the NASD to provide the requested interpretive guidance as soon as practicable. Tamara K. Salmon Senior 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.