

MEMO# 18655

March 17, 2005

NASD PROVIDES INTERPRETIVE GUIDANCE REQUESTED BY INSTITUTE ON APPLICATION OF NASD CONDUCT RULES TO DEFAULT IRA ACCOUNTS

[18655] March 17, 2005 TO: PENSION COMMITTEE No. 11-05 CHIEF COMPLIANCE OFFICER COMMITTEE No. 25-05 SEC RULES COMMITTEE No. 23-05 RE: NASD PROVIDES INTERPRETIVE GUIDANCE REQUESTED BY INSTITUTE ON APPLICATION OF NASD CONDUCT RULES TO DEFAULT IRA ACCOUNTS Last month, the Institute wrote to the NASD to seek interpretive guidance on the application of various NASD Conduct Rules to the opening and maintenance of default IRA accounts under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and the Department of Labor's related safe harbor regulation.* The Institute's letter sought guidance regarding the application to default IRA accounts of the NASD's rules that require broker-dealers to maintain certain account books and records and that prohibit a member from exercising unauthorized discretionary authority, making an unsuitable recommendation, and effecting unauthorized transactions in customer accounts. By letter dated March 17, 2005, the NASD staff provided the Institute the requested guidance. According to the NASD's letter, an NASD member acting in accordance with EGTRRA and the DOL's regulation may satisfy its recordkeeping requirements under NASD Conduct Rule 3110 based on information provided to the member by the plan sponsor on a default IRA account holder. Similarly, in the view of the NASD's staff, EGTRRA provides the necessary authorization for a member to open and maintain a default IRA account without violating NASD Conduct Rules 2510 and IM-2310-2 that prohibit, respectively, a member from exercising unauthorized discretionary authority and effecting unauthorized transactions. The letter notes, however, that members must obtain required account signature and additional account information from, and make delivery of necessary documents to, the holder of the default IRA account if and when he or she asserts ownership over the account. Finally, the NASD's letter expresses the staff's view regarding the application of the NASD's suitability rule to an investment in a default IRA account that complies with the DOL's safe harbor and that is initiated by the plan sponsor in accordance with a recommendation of a member firm. According to the letter, a recommendation meeting these conditions "is de facto suitable, and a member need not obtain any additional information for the purpose of making a suitability determination with respect to qualifying accounts." * See Memorandum to Pension Committee No. 7-05, Chief Compliance Office Committee No. 19-05, and SEC Rules Committee No. 17-05 [No. 18593], dated Feb. 25, 2005. 2 A copy of the NASD's letter is attached. Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format)

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