

MEMO# 20211

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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. [20211] July 21, 2006 TO: SEC RULES MEMBERS No. 64-06 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 8-06 RE: INSTITUTE LETTER ON NASD PROPOSAL RELATING TO DEFERRED VARIABLE ANNUITIES The Institute has filed a comment letter with the Securities and Exchange Commission on amendments to a proposed rule change filed by NASD relating to sales practice standards and supervisory requirements for transactions in deferred variable annuities.¹ The most significant aspects of the letter are summarized below and a copy of the letter is attached. The 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 letter states that NASD's proposal sets a bad precedent and may prove unworkable. Most significantly, by establishing a separate regulatory framework for one particular investment product, NASD's approach could lead to the adoption of separate and distinct suitability rules for other complex products, complicating compliance efforts of broker-dealers. The letter also states that it is questionable whether a separate rule is necessary to accomplish NASD's goals. The letter notes that the Institute is pleased that NASD's amendments to the proposal made several changes to the proposed requirements relating to recommendations of deferred variable annuities. However, the letter continues to express concerns relating to the proposed principal review requirements, especially in situations where a transaction is not recommended. The 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, that NASD provide 1 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 firms with flexibility to design principal review procedures that fit their particular circumstances and business models. Ari Burstein 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 20211, or call the ICI Library at (202) 326-8304 and request the attachment for memo 20211.