

MEMO# 19128

August 31, 2005

INSTITUTE DRAFT LETTER ON NASD PROPOSAL RELATING TO TRANSACTIONS IN DEFERRED VARIABLE ANNUITIES - CONFERENCE CALL SCHEDULED FOR SEPTEMBER 8TH

©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. ACTION REQUESTED [19128] August 31, 2005 TO: SEC RULES COMMITTEE No. 49-05 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 9-05 RE: INSTITUTE DRAFT LETTER ON NASD PROPOSAL RELATING TO TRANSACTIONS IN DEFERRED VARIABLE ANNUITIES - CONFERENCE CALL SCHEDULED FOR SEPTEMBER 8TH As we previously informed you, the Securities and Exchange Commission published a revised version of the NASD's proposal to create a rule specifically covering deferred variable annuities.¹ NASD's proposed new Rule 2821 would impose recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements tailored specifically to transactions in deferred variable annuities. The Institute has prepared a draft comment letter on the proposal. The most significant aspects of the draft letter are summarized below and a copy of the letter is attached. Comments on the proposal are due by Monday, September 19, 2005. We have scheduled a conference call on Thursday, September 8th at 11:00 a.m. EST to discuss the Institute's draft letter. The dial-in number for the call is 888/913-9967 and the passcode is 15838. If you intend to participate on the call, please notify us by sending an email to Stephanie Holly at sholly@ici.org. If you cannot participate on the call, please provide any comments you may have on the draft letter to Barry Simmons at 202/326-5923 or bsimmons@ici.org before the call, if possible. The draft letter supports the NASD's goal of ensuring that deferred variable annuities are sold only to purchasers for whom they are suitable. We expressed concern, however, that the substantive and procedural provisions of proposed NASD Rule 2821 could undermine the benefits of deferred variable annuities and have the unintended effect of discouraging the sales of these products in favor of other investments that are not subject to such product-specific requirements. This would not be in the best interests of investors. The letter makes the following points: 1 See Memorandum to SEC Rules Committee No. 44-05 and Variable Insurance Products Advisory Committee No. 6-05, dated August 2, 2005 [19054]. The SEC also extended the comment period to August 19, 2005. See Memorandum to SEC Rules Committee No. 46-05 and Variable Insurance Products Advisory Committee No. 7-05, dated August 5, 2005 [19069]. 2 A specific suitability standard for deferred variable annuities is

unnecessary and inappropriate; NASD should rely on and enforce its existing rules and form a joint industry/NASD task force with the goal to update and modernize existing guidelines that apply to the sale of deferred variable annuities; Broker-dealers should not be required to compare one investment product against another type of investment product as part of a suitability analysis; Broker-dealers should not be required to second-guess investment decisions made by investors who are not seeking a recommendation. Barry E. Simmons Associate Counsel Attachment (in .pdf format)

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