

Pension Income Stream Products Worry FINRA

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Some SEC-registered broker-dealers connect individuals wishing to cash in on their future pension payments with potential investors in such income streams. In April, the Financial Industry Regulatory Association (FINRA) published Regulatory Notice 16-12, highlighting certain concerns over its member firms' involvement in such transactions. Under a typical pension income stream product, the selling pensioner receives a lump-sum amount from the purchasing investor and, in return, is contractually bound to make future payments of pension income to the investor. The FINRA member is typically a pension purchasing company operating as an intermediary and facilitating the investment and subsequent payments. The Notice identifies unique and complex issues facing such FINRA members. These include the possibility of:

- Advertisements incorrectly leading investors to believe the product is a “safe” investment;
- Investors not fully understanding that, because federal law prohibits the assignment of pension assets, their only recourse for non-payment may be a breach of contract claim against the pensioner;
- Insufficient disclosure by pension purchasing companies to investors about commissions payable on the transaction and the illiquidity of the investment;
- Insufficient disclosure by pension purchasing companies to pensioners, including about the difference in value between the lump sum received versus the pension payments the pensioner is giving up; and
- Unavailability to the investor or pensioner of protections under securities or consumer lending laws, if pension purchasing companies incorrectly conclude that the product in question is not a security or a loan.

Member firms that neglect to consider such issues, especially in light of recent case law and administrative proceedings finding similar products to be securities, risk violating federal securities

laws and FINRA rules. FINRA suggests firms either prohibit sales of pension income stream products or adopt specific policies and procedures, including training of associated persons, regarding these products.

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