

In the Press

Webb Financial Group, LLC

Gary Webb
RFC® & CEO



Regulators Expected to Crack Down on Alleged Deceptive Annuities Sales

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Fran Lysiak

With increased scrutiny on sales of annuities -- particularly to the elderly -- states are expected to crack down on alleged deceptive practices by adopting a strict model law addressing suitability.

Meanwhile, controversy is brewing over the equity-indexed annuity, which the life industry says is a "fixed" product and therefore exempt from federal oversight. The National Association of Securities Dealers is preparing to join the fray by issuing guidance for broker-dealers on these products.

At the National Association of Insurance Commissioners' Summer National Meeting in Boston, North Dakota Insurance Commissioner Jim Poolman said the NAIC was encouraged at how many states have either taken action, or intend to take action, in their next legislative session or by rule making, on the NAIC's senior protection in annuity transactions model regulation.

The regulation, which addresses all annuities, allows regulators to go after all distribution systems, such as companies, agents and broker-dealers -- all of which are involved in the transaction process, he said. Specific to life insurers, "what our model does is force those companies to put in compliance systems to track those broker-dealers," Poolman added.

Bryan Cox, regional vice president of state relations at the American Council of Life Insurers, said the ACLI supports the NAIC's model law on suitability of sales to seniors.

Plaintiffs' attorneys have told Best-Wire they have filed class-action

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suits against U.S. life insurers, alleging deceptive sales of annuities to seniors. The suits, which they contend are widespread across the United States, generally allege that companies sold annuities that wouldn't mature until well beyond the buyer's actuarial life expectancy and therefore weren't suitable for seniors' financial needs.

In the current debates over annuities, among the biggest concerns jurisdiction over equity-indexed annuities. The debate centers on whether or not they are securities. Equity-indexed annuities aren't

regulated by the Securities and Exchange commission or the National Association of Securities Dealers.

"Equity-indexed annuities are, for the most part, fixed annuities, which fall under state insurance regulation as they should," said ACLI spokesman Whit Cornman.

Sales of equity-indexed annuities have skyrocketed in recent years. In 2000, total U.S. sales were \$5.5 billion; in 2004, sales stood at \$24.3 billion, according to LIMRA International.

But Jeffrey D. Voudrie, president of Tennessee-based Legacy Planning Group Inc., a private wealth-management firm, calls these products a "hybrid" between fixed and variable. Insurers classify them as "fixed" and in so doing, "get around a lot of securities legislation" at both the state and federal levels, he said.

Deceptive sales of equity indexed annuities, especially to seniors, are rampant, said Voudrie.

Voudrie, who also is the author of GuardingYourWealth.com, said he spoke with an 80-year-old man from Texas who lives in a large retirement community. The man was concerned about having to pay taxes, but he wasn't in a "high tax bracket."

The man had about \$300,000 in stocks, Voudrie said. "The agent had him sell all of that and move 100% of his money into a high-commission EIA," he said.

The NASD is "currently conducting a sweep of a number of firms to look at their sales and marketing materials for equity-indexed annuities," said NASD spokesman Herb Perone. The NASD "expects to issue guidance for broker-dealers" on these annuities within a few weeks, he said.

Gary Webb, RFC, chief executive officer of Webb Financial Group, based in Minneapolis, said the SEC believes equity-indexed annuities should be sold by those who have a securities license. Currently, anyone with an insurance license can sell these types of annuities, he said.

"Most equity-indexed annuities have 90% invested in a fixed portfolio and the other 10% is invested in the market, tied to an index," Webb said, adding that no federal regulation is needed.

According to Voudrie, the bottom line is that all annuities -- including fixed -- need federal oversight "so there are higher licensing requirements for those who are selling them."

But the ACLI's Cornman said the suggestion that fixed annuities be federally regulated "contravenes current law. The law is clear. Fixed annuities are contracts written from an insurer's general account; the management of which is regulated by state insurance departments."

Even though a fixed annuity is an insurance product, it is marketed as an investment, Voudrie countered.

"Often, they are used as a substitute for a CD which is directly insured by the government and doesn't have any commission incentive for the one selling it," he said. "The commissions on fixed annuities are high enough that, I feel, there is a conflict

of interest for those recommending them.

"An agent can put 100% of someone's investable assets in one and there's not a compliance officer looking over their shoulder like there is with a variable annuity," Voudrie added.

Recently, the Missouri Department of Insurance filed rules adding consumer protections in sales of variable annuities. The new rules, modeled after NASD standards, require a determination on whether a variable annuity is suitable for a consumer and allow the department to discipline producers who don't comply with the standards.

Brian Atchinson, executive director of the Insurance Marketplace Standards Association, the nonprofit organization that promotes high ethical standards in the marketing of life insurance, long-term care insurance and annuities, said the alleged practices are "cause for concern."

"Even one consumer harmed is one too many," Atchinson said. But "at this time...it's unclear whether the broad regulatory approaches that seem to be under way are really warranted based upon anecdotal evidence."

Jack Dolan, another ACLI spokesman, recently said consumers own about 34 million individual annuities, which represent about \$1.2 trillion in long-term savings. "The fact is that a very small percentage of this group has ever registered a complaint with regulatory authorities," he said.

There are two basic types of annuities -- fixed and variable. Both can offer a variety of payout or contribution options, according to "A Consumer's Guide to Annuities," published recently by IMSA.

In addition to their state licenses, agents who sell variable annuities must be registered as representatives of a broker-dealer that is a member of the NASD and registered with the SEC.