

## **General Comments about the Conflict of Interest Rule and this Insurance Intermediary Exemption**

The rule seeks to address conflicts of interest which are seen as costing consumers billions in retirement savings. It contends when there is a conflict of interest the agent will act in his/her own interest and not the best interest of the customer. Fixed annuities and fixed indexed annuities are identified as products that need to be regulated under this rule. The distribution of those products are, however, most efficient through independent agents. The insurance industry could sell these products through advertising or some other distribution method but the cost would be higher than paying a commission through the independent agent channel. Other methods have been attempted but never found to be able to compete with the efficient targeted marketing through an insurance agent. If fixed annuities could be sold using cheaper methods and more efficiently then those means would be used now.

The department does not deny that they are increasing the cost of distribution through: a) increased liability insurance premiums, b) staff to administer the rule, c) systems modification and maintenance and probably more. This cost like all other costs will come out of the customers credited interest rate. Said another way, the rule will end up costing all consumers the amount of the additional expenses added to distribution. For example, if the cost of implementing and administering the rule is 0.25% and the total commission required by agents and insurance intermediaries was 6.50% before the rule then it will be increased to 6.75%.

That additional 0.25% commission will be reflected in the credited rate of all annuities. If we assume that cost to be spread over a 5 year annuity then the credited rate will be reduced by at least 0.05%. For example, the credited interest rate which could have been 1.25% is now 1.20%.

The rule effectively reduces the annuity benefits for ALL consumers by adding to the cost of distribution. It should be considered by the department that increases in the cost of distribution is more difficult for shorter surrender term annuities and/or smaller entities. That means this rule advantages larger insurance companies, larger IMO's, and higher producing agents. It will also disproportionately reduce the availability and competitiveness of shorter term annuities. Having fewer choices is not in the best interest of the consumer.

## **Regarding FINRA Investor Alert on page 48 – “EIAs are anything but easy to understand”**

Fixed Indexed Annuities (FIA) as designed and marketed today are relatively easy to understand and also can be compared both against other FIAs and

fixed annuities. Nearly, all of these annuities have a fixed rate which can be used to estimate the expected interest credit as well as compare different annuities. The FINRA Investor Alert is out of date and should not be relied upon.

**Regarding SEC Investor Bulletin on page 49 – “You can lose money...”**

This statement is true that indexed annuities have surrender penalties but these penalties are nearly identical to fixed annuities and variable annuities but the wording seems to indicate that indexed annuities are different in that regard. That seems to indicate a bias against indexed annuities.

**Regarding the insurers ability to change the terms in the contract on page 52**

With respect to rate guarantees there are two types of fixed annuities – those which guarantee the rate for the surrender term (known as Multi-Year Guaranteed or MYG) and those which declare the rate each year (known as a fixed annuity or declared rate annuity). These types also exist on the fixed rate of an indexed annuity. Some products guarantee the fixed rate for the term or a significant number of years and some declare a fixed rate each year. This is a valuable protection for consumers who are concerned that the indexing features are not guaranteed and could be adjusted downward in the future. The customer has the peace of mind to know that the fixed rate is available to them in any year they want to use it and they are not locked into linking to an index.

It should be recognized by the department that fixed indexed annuities can be identical to a fixed annuity if the customer never uses the indexing. Because that is the case, indexed annuities credit fixed rates almost identical to fixed annuities.

Again, the department should recognize the importance of a fixed rate available in an indexed annuity as a a) means to compare and contrast products (both fixed and fixed indexed) b) means of understanding the tradeoffs between guarantees, benefits, riders and other features available on a product being considered.

**Regarding audit of financial statements page 61**

Financial statements are not indicative of capacity and capability of companies to implement the rule. Which accounting method would be used? Private companies should not be forced to make their financial records public. Instead, criteria should be published that indicates financial institution controls, policies, and procedures to ensure that impartial conduct standards are met.

### **Regarding Insurance or Assets page 62**

Liability insurance is not current available in the market place for insurance intermediaries. Setting aside assets to cover potential liability is not workable because the number is at a level that only large or highly capitalized IMO could serve as the FI. This would disproportionately harm smaller IMOs by forcing them to be supervised in some other way.

### **Regarding Insurance Intermediaries “not necessarily having the sort of history of regulatory oversight that characterize Financial Institutions” on page 64**

One reason that IMOs have not had this is that until now fixed annuities and fixed indexed annuities have been recognized as being so safe that no supervision is necessary. Analogously if I were to beat you with a wooden baseball bat then I can do real damage but if I beat you with a Styrofoam toy baseball bat it would make noise but not do you much harm. The need to regulate these annuities is not needed because of their safe characteristics.

IMOs currently stand as a first line of defense for ensuring that the application is suitable and in good order. They act in this something similar to this capacity in order to expedite the sales process. This process is a similar oversight.

### **Regarding the \$1.5 billion in premium on page 65**

A premium threshold should not be used. A three year threshold would mean that an experienced owner with experience staff could not immediately start up a new IMO as a financial institution. Furthermore, few current IMOs can actually meet this criterion. Premium is not an indicator of financial soundness. And it excludes smaller well run, experienced IMOs which operate efficiently and profitably.

Even if a premium threshold is included it should be something much lower in order to not cut smaller IMO's out of the market place.

The inclusion of a premium threshold would harm smaller insurance companies as well because they would be forced to use larger IMO's where they receive very little shelf space. By harming smaller IMO's and smaller insurance companies, consumers will no longer have access to the kind of quality advice that the rule is trying to promote.

### **Regarding approving written marketing materials on page 83**

What is the definition of "written marketing materials"? Does this mean general, non-product specific material designed to introduce the customer to the product concepts? Does written mean images and graphical electronic content? This is too vague.

### **Conclusion**

In general, it is my hope that the rule will be dramatically modified to exclude fixed annuities and fixed indexed annuities because a) they are safe and similar enough as to not need further regulation and b) would be distributed through a reduced number of IMO's and insurance companies thus reducing access to these beneficial products.

Specifically, the Insurance Intermediary Exemption should be modified to better fit with the already cost efficient distribution system in place and not unfairly advantage the large IMO's and large insurance companies.

Sincerely,

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