

# A House Divided

By **LINDA KOCO**

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As last-minute Congressional negotiations on the financial reform bill seem to make Rule 151A a non-issue, the annuity industry has to pull back from this potentially explosive issue. Rule 151A was in the process of turning the industry against itself...but will independent producers be able to go back to business as usual?

Earlier this year, five of the life insurance industry's biggest players—AXA Equitable Life Insurance Company, Hartford Financial Services Group Inc., Massachusetts Mutual Life Insurance Company, MetLife Inc. and New York Life Insurance Company—approached various independent marketing organizations to recruit them to distribute the carriers' fixed life insurance products. It was a routine scouting expedition for new distributors. But it turned into something much bigger and much more divisive: an industry fight over Rule 151A.

Surrounded by controversy since its proposal by the Securities and Exchange Commission in 2008, Rule 151A would reclassify equity index annuities (EIAs)—sometimes referred to by the industry as fixed index annuities (FIAs)—as securities, thereby wresting their regulatory oversight away from state insurance agencies and putting it into the hands of the SEC. But more importantly, the rule would require producers to obtain securities licenses to sell the products. The rule stems from an effort to address complaints of predatory sales practices by agents selling EIAs to seniors, for whom they are not well suited. The rule is hotly contested by producers that claim the product has been tainted by a few bad apples and that SEC oversight means costly licensure and harsh penalties for failing to abide by securities regulations.



All that may be moot, however, as a recent amendment to the financial services reform bill in Congress looks likely to exempt the sale of EIAs from SEC oversight entirely (see “Sigh of Relief for EIA Sellers, p. 10). But for independent producers who saw 151A as a catastrophe in the making, it may not be so easy to do business with the five big carriers who supported the idea of SEC oversight.

Case in point: Blair C. O'Connor, president of Producers Choice, an IMO based in Sterling Heights, Michigan. Like many who sell EIAs, O'Connor opposes 151A, and he has joined a coalition of like-minded IMOs, agents and carriers that are working to stop 151A from ever being implemented.

As O'Connor recalls it, some pro-151A companies came to his office a few months ago and asked him to start distributing their universal and term life insurance products. This rankled O'Connor, who felt that the companies were trying to do life insurance business with him on one hand and trying to undermine his own EIA business on the other.

He says he told the company reps how he felt, but the reps just shrugged and said the pro-151A position was coming from another part of their distribution. This did not satisfy O'Connor, so in addition to supporting efforts to quash 151A, he is trying to spur EIA producers and IMOs to reconsider doing any business with pro-151A carriers at all.

Andy Unkefer, president of Unkefer & Associates Inc., a Glendale, Ariz. brokerage and annuity wholesaler, is among those who oppose 151A. He agrees with O'Connor that independent agents and IMOs should avoid doing business with insurance companies that support 151A.

"When you're independent, the best thing to do is to vote with your business," he says. That is, to give business to companies that support the independent business model.

The problem, says annuity expert Jack Marrion, president of St. Louis-based Advantage Compendium Ltd., is that most IMOs and agents know about the pro-151A position of five carriers, but they simply do not care about it. The pro-151A carriers mainly write variable policies, and by backing the rule, they are simply looking after their own interests. Moreover, most IMOs and EIA producers do not sell products of those companies and very few write life insurance, so the pro-151A carriers do not affect them on an everyday basis.

Marrion says most IMOs and agents lament this split in annuity carriers, but while there is strong opposition to 151A among independent IMOs and agents, producers differ over what, if anything, should be done about it. Some IMOs view the pro-151A position among carriers as irrelevant, and some even wonder if getting involved in the 151A fight even matters.

### **A non-issue?**

"We expected [the pro-151A carriers] to take that position, because the majority of their business is securities," says Matt J. Rettick, chief executive officer of Covenant Reliance Producers, LLC, Nashville, Tenn.

But for independent agents, he says, it is a non-issue. The five companies are captive agent companies, or like captive companies, he says, so independent agents can't sell the companies' products anyway.

Further, “the companies’ game is in the securities marketplace,” Rettick says. “They don’t sell much in the way of fixed products, and they don’t sell indexed products...so we wouldn’t want to sell for them anyway, since we are a true independent channel, and we represent a vast array of companies.”

Agents should definitely focus on continuing “a strong offense” against 151A in Washington and the courts, Rettick stresses. But they should also “prepare for the worst” by, say, becoming a registered investment adviser or purchasing/creating their own broker-dealer—both of which he has already done.

Karlan Tucker, chief executive officer of Tucker Advisory Group, Littleton, Colo., also sees the position of the five companies as a non-issue.

The companies have huge variable annuity operations, Tucker says, “so they are trying to protect their own premium dollars by supporting 151A, especially since a lot of money has been flowing from VAs into FIAs.” Some producers think the pro-151A companies will themselves start selling FIAs if the products are declared securities, he adds.

The very large size of the five companies does give them clout, Tucker says. But the coalition has “done an effective job of counteracting that,” he maintains. To illustrate, he points out that in his own coalition-related visits with 15 Congressional offices, the five companies’ position on 151A came up in “only one conversation.”

### **Vive la difference**

Some producers don’t think a united front is important. For example, Brion Harris, a securities-licensed advisor and managing partner of Premier Planning Group, Annapolis, Md., says he sees “no need to have a united front on stopping 151A.” He predicts the rule will die anyhow.

The key issue in his view is agent licensing. “A lot of those selling equity indexed annuities are not securities licensed, or they dropped their securities licenses” to avoid the red tape and compliance that goes with selling securities, he recalls. If 151A takes effect, they would have to go back and get relicensed, he says.

But even if 151A never goes into effect, many producers will go ahead and get their securities licenses, Harris predicts. He thinks that will happen because FIA discussions with clients about where the assets come from (to fund the FIA) often involve discussing securities anyhow.

Jim Pedigo, the owner of Financial Rate Watchers Inc., a Longwood, Florida, insurance brokerage and agency, has a much different take.

“I believe the SEC should regulate the index annuity products that have market value adjustment features, because that puts risk on the consumer,” Pedigo says.

“But if the policy has a minimum guarantee and no MVA, it should not be regulated as a security.

“So the insurance companies that are in favor of 151A, with clarifications—I’m in that camp,” he says.

In the meantime, the industry should not unite against 151A, he says. “We should unite on what should be in 151A—for the protection of the consumer—and what should not be in 151A.”

United action on regulations is important, he says, because “the regulators will shred you up if the industry does not always agree on key points.”

But with legislation, divergent views are okay, he maintains, “because with legislation, you get the information out and the legislators decide.”

On the other hand, Sheryl Moore, president of Advantage Group Associates Inc., an indexed product resource based in Des Moines, Iowa, thinks a unified front in legislative matters is important.

“Legislators don’t always know who does, and does not, sell indexed annuities” in their market,” she explains. “So they tend to look at what the big companies are doing—and those five companies are not only big, but they also have name recognition due to all the advertising they do.” If the legislators have no other information, that is what legislators tend to follow, she continues.

As Moore sees it, reaching out to legislators and educating them on indexed products increases awareness, and that could impact the outcome.

In the meantime, the industry still has to contend with the lingering effect of O’Connor’s grassroots opposition not just to Rule 151A but to the carriers who supported it in the first place.

“I’m not trying to be the big bad wolf,” O’Connor adds, but he says he does want to let his colleagues know what is happening and create some solidarity. Whether that still matters in a world without Rule 151A, or whether the schism over 151A will make it more difficult for companies on either side of the issue to still do business remains to be seen.