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Sigh of Relief for EIA Sellers

By ARTHUR D. POSTAL **Published 7/12/2010**

For months, regulators from the Securities and Exchange Commission have sought to extend that agency's regulatory authority to cover the sale of equity indexed annuities, on the grounds that EIAs derive their value from market movements and as such, are not true insurance products. Looming SEC regulation has put a pall on the EIA industry, but recent negotiations over Rule 151A of H.4173 have all but guaranteed that EIAs will remain regulated by state insurance offices and not by the SEC.

According to Andrew Unkefer, president and CEO of Unkefer & Associations in Glendale, Arizona, conferees on financial services regulation agreed to adopt an amendment to the bill that would classify fixed indexed annuities as insurance products, with several caveats. Unkefer, whose independent marketing company makes about 85% of its total revenue from EIA-related activities, says that exemption from SEC oversight should lead to renewed growth in the sale of EIAs.

Unkefer says that as many as 150,000 producers sell EIA products, and that overall sales of these products has slowed ever since the SEC floated a rule in June 2008 that would regulate the products as securities.

The rule, 151A, was published by the agency in January 2009, but implementation of the rule has been delayed on procedural grounds by a federal appellate court panel based in Washington, D.C.

Two things concern the industry, he said.

Under a securities context, sale of the product would be dramatically different. "The product would continue to exist, but the people with whom we work don't want to sell investments; we want to sell savings products, products that protect the principal of the customer," Unkefer said. "We're not saying investments are bad, but we want to sell products that sell security to our customers."

The amendment was introduced by Sen. Tom Harkin, D-Iowa. Insurers based in Iowa and Minnesota are prime underwriters and marketers of EIAs. According to industry data, some $30 billion in EIAs are sold annually nationwide.

Under the amendment, sales of EIAs would remain state-regulated if they are sold by insurers domiciled in states that have adopted the model regulations recently developed by the National Association of Insurance Commissioners. Currently, 40 states have adopted the NAIC suitability model law.

However, according to Fred Bellamy a partner at Sutherland, Asbill & Brennan in Washington, D.C. Rule 151A, promulgated by the Securities and Exchange Commission in January 2009, will remain on the books.

But, it will only apply to products sold by companies that do not comply with the NAIC suitability standard.

Under the amendment, Bellamy said, to be exempt from Rule 151A, underwriters and agents selling indexed products must not sell a variable product; they must comply with state non-forfeiture laws; and they must comply with a suitability standard.

There are two options for complying with a state suitability standard.

For contracts issued after June 2013, there is mandatory suitability, that is, the product is governed by state rules that impose suitability standards that meet the NAIC model.

The other option, which does not have the 2013 implementation date, is voluntary suitability, that is, to sell an indexed annuity issued by a insurance company that adopts and implements on a nationwide basis suitability standards that meet the NAIC minimums.

Unkefer said that if the bill is passed by Congress and signed by President Obama, it would add stability to the marketplace. Since the SEC rule was proposed, producers had been examining alternate products to the sale of indexed annuities, and no enw companies have added indexed annuities to their offerings. But if the bill is signed into law, all that may change.

“This is an insurance product,” Harkin said of equity-indexed annuities in general. “It always has been and still is today. The Security and Exchange Commission’s got a lot of other things to do other than regulate what is now an insurance market.”

Sen. Jack Reed, D-R.I., chairman of the securities subcommittee of the Senate Banking Committee, opposed the reclassification, contending that Harkin’s amendment could not be inserted at this point because it was not contained in the bills passed by the House and Senate.

“This is a major amendment of securities law without any hearings or debate,” Reed said. “I don’t think this is the proper place to make such a change.”

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