November 17, 2008

RE: File No. S7-14-08

I am writing about the SEC's concern for regulatory oversight regarding Equity Indexed Annuities.

With 20 years experience, including the last two years as Chapter President of the Utah Chapter of the Financial Planning Association, I most emphatically support the SEC's proposal for oversight and tightened regulation of Equity Indexed Annuities.

While the insurance industry has taken a PR approach with so called Suitability Forms and renaming the generic term of EIA to FIA (Fixed Indexed Annuity), the significant underlying problems have been ignored to the detriment of the consumer.

One wonders if the National Association of Insurance Commissioners truly understands the issues as an entity or has embraced the term "Suitability" in order to join the insurance industry in glossing over the problems while continuing to promote business in their respective states without regards to the financial impact on the consumer.

Imagine for a moment…As an insurance company, if you could triple your cash inflows by tripling your sales force without requiring any additional training or licensing of your sales force, AND bypass state law restrictions on investing premium dollars -- would you do it?

And that is how the industry moved from regulated fixed products to the murkier world of Equity Indexed Annuities, after loosely tying their products to the Safe Harbor provisions in order to fly under the SEC radar.

The end result is that non-securities licensed agents could now sell "non-investments" tied to investments without SEC or NASD (now FINRA) oversight – COOL!

By 2005, EIA inflows were in the neighborhood of $500 Billion – which is quite a neighborhood. Profit margins doubled and tripled because fixed annuities had a decrement of 1.5% above the amount credited to the consumer, but EIA's charged asset fees that were double that, and there were no restrictions on companies using premium dollars – while investing in derivatives to cover the returns – to investing extra for themselves.

Imagine if you will, a business that
Invests a client's money without disclosure of investment risk,

--Does not have to disclose portfolio losses to public before they purchase product,
--Co-mingles a client's money without Separate Accounting thereby allowing you to use money from Guaranteed Accounts to cover your bad investments,
--Has no transparency of past or present bad investments,

--Invests in derivatives without disclosure to investors,
--Guarantees principal without disclosing bad years aren't made whole until end of 10,15, or 20 year surrender period,
--Advertises that returns tied to the S&P 500, but can arbitrarily limit how much client can share in their returns by lowering participation and cap rates,
--Does not have to reveal Investment Manager experience with Derivatives before marketing the product to the public,
--Can phase out products that are costing the company money due to bad investments, and offer product holders big incentives to move to a new product without disclosing the whys and wherefores,
- -Can avoid disclosing to purchasing public that agent receiving higher than normal commissions to selling agents, as well as agent is also receiving bonuses, participating in sales contests, competing to win trips, and even receiving stock and equity compensation based on his/her volume of sales, as well as trailing commissions based on assets under management or similar to 12(b)1 mutual fund fees.

But it gets better, what if that same business also –

- --Provides S&P marketing brochures to their agents for public use,
- --Provides S&P historical return data for agents,
- --Misleads agents on product features and fails to fully disclose to them all pertinent facts,
- --Provides misleading training to agents,
- --Provides misleading software illustrations for agents to provide to the public,
- --Routinely lowers caps and participation rates when markets are up without disclosing the practice up front to a prospective purchaser of the product,

As one who holds an insurance license and sells EIA's from time to time as part of my practice, I CAN SAY BOTH THAT EIA'S CAN PLAY AN IMPORTANT PART IN A PERSON'S PORTFOLIO WHEN APPROPRIATE, BUT THE POINTS I HAVE MADE ABOVE ARE ALL TRUE AND FACTUAL BASED ON MY EXPERIENCES IN DEALING WITH MULTIPLE COMPANIES AND THAT TIGHTENED REGULATION IS BOTH DESIRABLE AND NECESSARY FOR THE PROTECTION OF THE PUBLIC AT LARGE AS WELL AS THE SENIOR POPULATION SPECIFICALLY.

Of particular concern, when I have attended various insurance conferences, and the topic of EIA's arises, a widely expressed opinion comes forth that insurance agents selling these avoid securities registration so they don't have to be subjected to securities laws (a novel concept) and so they don't have to worry about oversight or suitability requirements. Which stance brings me to the latest PR technique by the insurance industry to help fend off oversight by the SEC – so called Suitability Forms.

These Suitability Forms don't require all pertinent information to determine suitability for the consumer. In fact, I daresay, the most important information is deliberately left off, and to make matters worse, the purchaser is then required to claim that the product is

suitable for their situation without knowing what they don't know. This is akin to a person with chest pains, without the benefit of an EKG, deciding for the Doctor if the Doctor should perform cardiac bypass.

And don't even start me on the joke of a Buyer's Guide which, in my opinion, actually misleads consumers. And of late, new supposed 501(c)6 trade groups holding themselves out as estate and/or financial planning professionals but specialize in EIA sales, not to mention the numerous new credentials that have been springing up to supplant the now maligned CSA designation.

Let me conclude with a few real life stories I have been involved with, which also point out the inability of the states to properly and fully oversee problems with EIA's.

1) 1) Actual Advertisements for a) Selling Guaranteed Securities, b) Highs of Market while having a Safety Net, c) insurance agents using the term "Federal" in their business name with impunity despite federal and state law implying a relationship of safety or federal oversight.
2)
B) 2) Client who was sold two annuities jointly for college savings for kids, with her age 40, and oldest was four years away from college. Sold by agent from out of state, and not licensed in UT. Insurance Dept stance was "we can't do anything about it". After proof of forgery regarding one policy, his company terminated him, but still took UT a year and high pressure to do anything to terminate his insurance license despite fraud and forgery.

3) 3) 83 yr old woman shortly planning to enter nursing home had all of her savings, CD's and other investments placed even though in 20 yr EIA. No liquidity, and there was no nursing home rider waiving surrender charges. Annuitization also means loss of potential earnings from S&P since insurance company pays a fixed rate. And with annuitization in first year, her interest would be lower than her CD's as she would have been getting less than .5% (1/2 of 1%)
4) 4) Retiring school teacher asked his financial advisor for help, and told he wanted absolute safety. Financial advisor rolled his 401k into an EIA, which it turns out, has almost full market participation without annual reset. New advisor at same firm unable to explain product to client then took some money out after repeated complaints by client and bought "B shares in a mutual fund (yes, I said "B"). Thereby losing any future guarantee for that money. Only recourse for this client who is 4 years into product, is to wait 3 more years until end of surrender period when he will receive guarantee option equal to 1.4% return but in the meantime, his money is locked up and he can't touch it if he wants to have any chance of getting his money out without market or surrender penalties -- and yes, he was pretty upset when I told him.

IN CONCLUSION, I most emphatically support the SEC's proposal for oversight and tightened regulation of Equity Indexed Annuities.

Respectfully,

Chuck Newton