August 13, 2008

Good afternoon!

I am a financial planning practitioner who has been licensed to sell securities and insurance for more than three decades. I am writing to express my support for the commission's effort to classify and regulate equity-indexed annuities as securities. While it is true that these annuity contacts provide a guarantee of principal that is absent in other securities there are other factors to consider:

- State insurance commissioners in many states have apparently been unable to deal effectively with sales practice issues, as complaints are plentiful. When I attempted to assist a Florida retired couple, *all* of whose liquid assets had been placed in equity-indexed annuities with a certain company, I was told by an investigator at the Florida Department of Financial Services that he had stacks of complaints against the company, and that they were unsure what outcome they could obtain for the client if they made a formal complaint. Had a FINRA complaint been possible, it would certainly have led to arbitration, in which these elderly clients would likely have prevailed, or obtained a satisfactory pre hearing settlement.
- Insurance agents who lack a securities license regularly recommend the liquidation of client securities to obtain funds for purchasing an equity-indexed annuity. In many cases they complete transfer forms that request the liquidation of mutual funds with the proceeds to be sent to the insurance company issuing the equity-indexed annuity. It seems to me that giving this type of advice and participating in effecting the sale of securities should only be done by those holding the appropriate securities license.
- These annuities are generally very complex. A typical retired client's understanding of the product is:
    - Participate in the "stock market" when it goes up.
    - Don't lose money when it goes down.
    - Minimum interest rate guarantee.

  They do not understand participation rates, asset charges, caps, whether participation rates and caps are guaranteed or can be changed at will by the insurance company, size and duration of surrender charges, amount of free withdrawals allowed, whether surrender charges apply to death proceeds for beneficiaries, the vesting of any promised premium enhancements ("bonuses").
- These contracts frequently have surrender charges that are much higher and longer in duration than are permitted in, say, variable annuity contracts. This is done to enable insurance companies to load these products more heavily for greater profits and higher agent commissions and agency overrides. In my example cited earlier, the agent earned $30,000 for spending an hour and a half at this elderly couple's dining room table duping them into locking up their entire life savings in a product that had a 20% first year surrender charge.
- These annuities have been sold largely to a retiree population who are understandably concerned about investment risk. Health conditions and resulting living situations can change rapidly for elderly people, making it advisable for them to have more flexibility than these contacts allow.

- The preceding two points scream out for more disclosure. Florida just increased the free-look period to 14 days but many of these contracts are undecipherable by the layman. I consider myself to be reasonably sophisticated in these matters, but have found it very challenging to determine how interest is calculated and credited on some equity-indexed annuities. I'm not sure whether a "prospectus" is the answer, but there needs to be a document that spells out in plain English how the product works and what its moving parts are.

Thank you for considering my comments.

Gary W. Cotter, CFP®