

NAIC Suitability in Annuity Transaction Model Regulation

BY STEVEN KASS & ANN BLACK

On July 2, 2009, the NAIC's Suitability of Annuity Sales (A) Working Group published an updated set of proposed revisions, which followed discussions with industry regarding the different distribution channels for annuity products.

The latest proposed revisions allow insurers to contract with third parties, including FINRA member broker dealers, to supervise annuity transactions. The July 2 draft exempts insurers from performing a suitability review of annuity transactions for which a FINRA member broker dealer is responsible and the insurer has determined that such broker dealer's supervision system conforms with FINRA principal review requirements. The latest draft also permits an insurer to use an automated suitability review system for all recommended annuity sales through other distribution channels. In all cases, however, the insurer remains responsible and liable for compliance with the suitability review requirements, including for any deficiency in an automated system, and the insurer shall not issue an annuity recommended to a consumer unless the annuity is suitable.

The July 2 draft clarifies the ongoing nature of insurers' distribution monitoring requirements: insurers must establish a continuous monitoring system reasonably designed to identify producer violations of suitability requirements as well as failures to comply with the insurer's supervision system. Insurers must also continuously collect and analyze relevant data, and evaluate the effectiveness of implemented supervision systems and procedures.

The July 2 draft specifically addresses opt-outs by consumers to provide suitability information by imposing additional requirements on insurers, insurance producers and insurance agencies. Insurers that permit opt-outs will be required to interview each consumer who does not provide suitability information.

The Working Group has requested comment on specific questions concerning: (i) restricting or prohibiting producer compensation for non-recommended sales, (ii) comparisons with alternative financial products, and (iii) training requirements.

State Suitability Initiatives

BY STEVEN KASS & ANN BLACK

Florida and New York continue their efforts to address suitability of sales of annuities. Florida continues its work on its proposed Rule 69B-162.011 – "Suitability and Disclosure in Annuity Contract – Forms Required." New York announced a series of hearings to gather information about life insurance and annuity sales transactions.

On June 16, 2009, Florida held a public hearing on its proposed Rule, which adopts two forms producers (or insurers when no producer is involved) must use for an annuity sale to senior consumers. At the hearing, industry members raised various global comments as well as technical drafting comments to the draft forms, and the Florida Department of Financial Services agreed to receive additional written comments for 10 days. Once DFS reviews the comments, it will determine whether modifications to the proposed Rule and/or Forms are needed, and if so, DFS will publish a formal Notice



Measuring up state suitability

of Change, which will trigger a 21-day comment period on the revisions.

The New York State Insurance Department announced on July 8, 2009, that it is seeking input from consumers, members of the industry, academics and members of the general public with experience or expertise on the subject of suitability in the sale of life insurance or annuities. The NY Department will hold four hearings throughout New York, during August and September

to assess whether there is a problem concerning unsuitable sales of life insurance and annuities in New York. The NY Department is seeking to determine if its current regulatory scheme is effective and whether the NY Department should promulgate new regulations that specifically bar unsuitable sales of life insurance and annuities. The NY Department is also exploring whether any new regulation should apply to all life insurance and annuity sales or just a certain portion, and what form any new regulation should take.