

Broker Protocol Sees Membership Growth

BY MICHAEL PETRIE

As a result of an increasingly competitive business environment, financial advisors appear to be moving from one firm to another with more frequency. Better compensation, increased freedom, more competitive transaction costs and the ability to better serve clients are routinely cited as reasons. Litigation against departing financial advisors and their new firms was frequently associated with such moves, as brokerage firms sought to prevent financial advisors from walking off with lucrative business. Because of fiduciary and contractual commitments advisors owed to their former firms, such lawsuits often involved charges of breach of fiduciary duty, breach of non-compete and non-solicitation agreements, unfair competition, theft of confidential trade secrets and the like.



In 2004, to stem expensive litigation, three large wirehouses created what has become known as the “Broker Protocol,” which sets forth specific procedures and restrictions that advisors must abide by when transferring from one signatory firm to another. So long as the terms of the Broker Protocol are followed, the signatory firms agree there will be no litigation. Signatory firms agree to follow certain practices for recruiting advisors, departing advisors are permitted to take certain information about their clients, and advisors are allowed to solicit their former clients after their departure. Although adoption was initially slow, since November 2009, the number of signatory firms has surged from around 380 to over 450, suggesting that firms may be coming to grips with the reality that advisors moving from one firm to another is just business as usual. However, we continue to see instances in which the Broker Protocol is not adhered to.

Florida Legislature Passes “Safeguard Our Seniors Act”

BY STEVEN KASS

On April 30, 2010, the Florida Legislature passed the “Safeguard Our Seniors Act,” which modifies a number of provisions of Florida insurance law relating to the sale of annuity products and, to a lesser extent, life insurance to persons aged 65 and over. The Act has since been signed into law by Florida’s Governor, and its effective date will be January 1, 2011.

Leading up to this Legislative action, Florida’s Department of Financial Services had been holding workshops and seminars to draw seniors’ and legislators’ attention to the need for “tougher senior investor fraud laws.” The Act will affect insurers’ sales of annuities to seniors by: (i) limiting surrender charges to 10% and the surrender charge period to 10 years (subject to certain exemptions, including sales to accredited investors); and (ii) lengthening free look periods to 21 days. The Act also requires insurers selling annuities, whether to seniors or non-seniors: (i) to provide a policy cover sheet, which will be part of the policy form and thus required to be filed for approval, informing the purchaser about the free look period, and providing contact information for the insurer, producer, and the Department together with any other information the Department may require by rule; and (ii) to deliver “Buyer’s Guides” at or prior to policy delivery in the form required by the NAIC Annuity Disclosure Model Regulation until the Department promulgates its own Buyer’s Guide (or for variable annuities, a policy summary until the NAIC or the Department promulgates a Buyer’s Guide). The Act will impact producers by, among other things, providing for enhanced penalties for wrongful conduct, empowering the Department to require producers to make restitution, and enhancing the Department’s license suspension and revocation powers.

Various provisions of the Act will impose administrative burdens on insurers and necessitate action before the law takes effect, such as the filing for approval of the cover sheet forms and modifications of policy administration systems to accommodate printing of the producer’s contact information on each contract’s cover sheet. Likewise, if contract forms do not currently comply with the Act’s free look and/or surrender charge percentage and period requirements, insurers will need to file for approval new forms as well as decide whether those new forms will apply to all sales or only senior sales. Having different forms and/or contract terms, depending on whether the purchaser is a senior, may also give rise to practical administrative difficulties.