

Regulators Contemplate Preventing Stranger Originated Annuity Transactions

BY SCOTT SHINE

Insurance regulators are concerned about harm to consumers that arises in stranger originated annuities transactions (STATs). On May 20, 2010, the NAIC held a public hearing as it deliberated whether current laws and regulations need to be revised or new laws and regulations need to be developed to prohibit these types of transactions.

In a STAT, a third party investor initiates the purchase of an annuity for investment purposes. The investor finds a terminally ill individual on whom the investor purchases a variable annuity that offers guaranteed minimum death benefits (GMDBs). Through the GMDBs the investor receives at the death of the annuitant, at a minimum, a full return of the purchase price. Thus, an investor can reap the potential gains of an up-market with essentially no risk of loss in the event of a down-market.

At the May 20 hearing, the Committee received testimony from regulators, industry leaders and victims of STATs. The presenters discussed how insurers could prevent STATs. Some of the actions that have been proposed include:

- Inquiring about the health of the annuitant and about the relationship between the annuitant and the owner during the application process;
- Adding attestation clauses to the application regarding the purpose of the annuity purchase; and
- Adjusting agent commissions for policies annuitized within the first year of the contract.

The presenters also discussed the extent to which state insurable interest statutes could be applied to prohibit STATs and that STATs run afoul of the public policy that prohibits wagering on the death of a person. Many of the presenters believed that the various insurance and securities regulations are sufficient to protect consumers. Another point of discussion was how anti-rebating laws could be applied to STATs. ACLI offered that it is working with its members to assess the prevalence of these transactions.

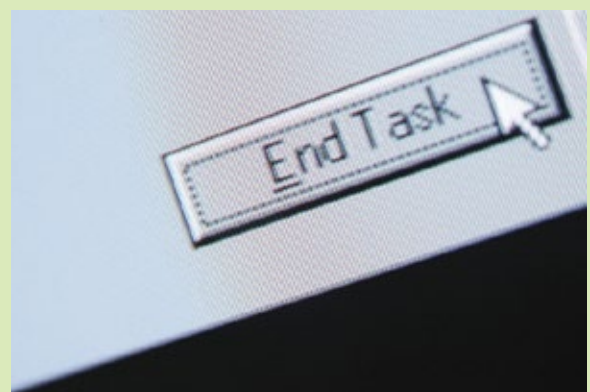
Any action taken would be complementary to standards for GMDBs for individual deferred annuities adopted on February 22, 2010 by the Interstate Insurance Product Regulation Commission. These standards permit the GMDB form to include provisions for termination of the GMDB feature upon assignment or a change in ownership where the new owner or assignee is not essentially the same person as the prior owner.

The End for Embattled Rule 151A?

BY GARY COHEN & KRISTIN SHEPARD

At press time, the House and Senate Committees charged with finalizing the pending financial reform legislation have approved an amendment that, in effect, overrules SEC Rule 151A. The financial reform legislation is now headed to the full House and Senate for a vote; if approved by both houses, it could be on the President's desk for signature before the 4th of July recess.

In addition to this legislative attack, Rule 151A has been under legal attack in the U.S. Court of Appeals for the District of Columbia Circuit, which previously held that the SEC arbitrarily and capriciously failed to analyze the impact of the Rule on efficiency, competition and capital formation. The court invited briefing on the proper remedy for the SEC's failure to conduct the required analysis, with the insurance industry petitioners arguing that the Rule should be vacated. The SEC had told the court that it expected its staff to complete the analysis and bring a recommendation to the Commission "in the Spring of 2010" and asked that the Rule be stayed in the interim. However, the SEC, on June 18, 2010, filed a "Status Report" in the litigation, which, instead of containing an update on the promised analysis and recommendation, referred the court to the pending anti-151A legislation in Congress.



End of the road for Rule 151A