

Variable Annuity Summary Prospectus Gains Momentum

BY RICHARD CHOI

SEC Chairman Mary Schapiro and SEC Director of Investment Management Buddy Donohue recently heralded the development of a variable annuity (VA) summary prospectus. The VA summary prospectus initiative represents a golden opportunity for the VA industry not only to develop concise consumer-friendly offering documents, but also to save millions of dollars annually in printing and delivery costs.

In furtherance of those goals, the Insured Retirement Institute (IRI) submitted a rulemaking petition to the SEC proposing the adoption of a VA summary prospectus in 2008. The SEC deferred consideration of the IRI rulemaking petition while it gained experience with the mutual fund summary prospectus, which it adopted in early 2009.

Late last year, at the invitation of the SEC staff, members of an IRI working group met with the SEC staff to discuss the IRI's rulemaking petition. The SEC staff provided detailed comments on the model VA summary prospectus template that was included in the rulemaking petition. In April 2010, after months of work, the IRI working group submitted three sample VA summary prospectus templates to the SEC staff, based on actual products, ranging from the simple to the more complex. Also, under the IRI proposal's "layered" disclosure approach, full statutory prospectuses and periodic reports could be delivered online.

The IRI anticipates engaging in further dialogue with the SEC staff with a view to bringing the VA summary prospectus initiative to fruition.

Financial Institutions to Unmask Some Account Beneficial Owners

BY KAREN BENSON

The states generally do not collect much information about beneficial owners of legal entities created under state law. Accordingly, FinCEN, acting jointly with the SEC and other regulators, has issued recent guidance imposing new regulatory expectations on broker-dealers, mutual funds and other financial institutions.

The guidance specifically calls for such institutions to implement, as part of their anti-money laundering compliance programs, procedures "that are reasonably designed to identify and verify the identity of beneficial owners of an account, as appropriate, based on the institution's evaluation of risk pertaining to an account." These procedures should be developed to identify customers who pose heightened money laundering or terrorist financing risks, such as certain trusts, corporate entities, shell companies, and PICs.

For such accounts, the guidance instructs financial institutions to perform "enhanced due diligence" that is reasonably designed to enable compliance with AML requirements. Depending on the risk level, this may include not only ferreting out beneficial owners, but also taking steps to reasonably understand the sources and uses of funds in the account and the relationship between the customer and the beneficial owner.

The guidance also instructs financial institutions to use the information they obtain under these new procedures for monitoring purposes and to determine whether the actual sources of funds and uses of the account are as expected.

In important respects, the guidance seems to go beyond the pre-existing requirements for customer identification programs, even though the guidance purports that it "does not alter or supersede previously issued regulations, rulings or guidance related to customer identification program ... requirements." Indeed, some have criticized the regulators for issuing this guidance informally, rather than pursuant to a rule-making procedure.



True identities to be revealed