The need for definite, strong rules governing the sale of variable annuities can not be over emphasized. Many, if not most, VA's are sold by full-time insurance agents who have no other contact with securities rules and regulations. They sell variable annuities almost exclusively because they have higher commissions and there are no commission break points. It is also almost impossible for a customer to know what the broker is being paid in up-front fees in order to make an informed judgment concerning sales motives.

Variable annuities are exempt from many state securities laws, leaving the NASD as the only source of sales practice regulation. The NASD has a miserable record of protecting public customers as the securities analysts and mutual fund scandals of the recent past and limited partnership scandals of the 1990's amply demonstrate. The NASD has been issuing Notices To Members since at least 1996, apparently to no avail. It is therefore important that strict, clearly defined sales practice rules be established so that unethical agents/brokers can not claim that they did not violate any rules. In a recent deposition, both the agent and his office manager of a large insurance company conceded that a variable annuity sale probably wasn't suitable but both denied that it was their responsibility to make that determination. Neither could say who they thought was responsible, but thought it might be someone in Denver or New York. The sale was in Kansas City. Public customers need to be able to show clear violations in order to have some chance of recovering losses through what is often their only recourse, NASD arbitration.

Disclosures should include a plain English statement of the amount of up-front fees or commissions that will be paid to the member firm. The up-front 6%-9% is far more meaningful to most customers than the 2% - 2.5% of ongoing fees because they normally don't think to add the underlying fund costs to the annuity costs and do not know what they can reasonably expect from the stock market over the long term and do not realize they are agreeing to pay 20% to 25%, of what is the best case return they can expect, in fees.

There should be some discussion or disclosure of "deferred" variable annuities versus needing income from the investment. Many are sold to older and retired customers who need income soon, often immediately. If an investor is sold a deferred annuity with the intent to begin taking immediate payments, especially in a retirement account, it is probably not suitable. The sales person simply puts in a withdrawal request, often within days, and there is no "deferral" for which the customer has paid a very high price.

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