August 3, 2004

To NASD rules committee

Viewing the proposed changes of NTM 04-45 reminds me of an incident many years ago. A client of mine responded to a "response requested" mailing from one of my insurance companies regarding his purchase of their Universal Life Insurance policy. One of his statements to the insurance company inferred that his purchase was an "unsuitable" transaction and that any potential negative consequences of his purchase had not been disclosed prior to his purchase. Therefore he should be made whole and the original value of his policy should be credited back into his policy. (His cash value had reduced to zero because of mortality, administrative expenses and reducing interest rates).

I was provided the opportunity by the insurance company to respond to his remarks so they could determine if there was cause to "reinstate" his values. I responded that I had not recommended the purchase, in fact in the replacement form that was required for submission at the same time as the application, I had written in the suitability question that I "Did Not" recommend the purchase. In the section of the replacement form asking why the proposed insured was purchasing the insurance I had him write in his own words the reason he wished to purchase the policy to which he did. In reviewing the material the insurance company ultimately denied his request.

In receiving the denial from the insurance company, he called me asking why he was denied. I told him that I did not agree with the statements he had provided the insurance company. I told him that I had recommended not to purchase the policy in writing of which he was given a copy at time of the purchase. A copy remained in my file which I provided another copy to the insurance company along with my remarks. His response to me was "but, you really didn't mean it, did you".

What does all this rambling have to do with the issue at hand. Plenty.

With few exception, most registered representatives have the best interests of the client in mind when dealing with a securities related product. After all our reputation and career are on the line with every recommendation

we make. We must not only be concerned with our state regulators but NASD and SEC as well. We can sit across the table and explain everything in detail, get everything in writing, get their understanding of what they are doing, how it addresses the issues thay have and everything is fine. But when some unexpected event occurs and it has an impact on what they may do or what cost is associated with it, all of a sudden they don't remember a thing. All of a sudden the papers they were provided, selling material,etc is no where to be found and now it becomes an "unsuitable" transaction.

This NASD rule proposal is similar to the recently proposed rules by the SEC. The NASD should defer action on this point-of-sale disclosure concept until the SEC's latest rule making on this subject has been finished. Requiring a suitability analysis document and/or other supporting documentation to be reviewed by a Principal just for Variable products is unjustified and is in conflict with the legal requirements relative to suitability issues that have developed over the past several decades. No other investment product requires this type of suitability standard.

One Business Day Turn Around time for Principals review is unworkable. If the Principal is out of the office for a period longer than the next business day, what happens? Does the transaction have to be rewritten. We already have oversight of our activities. It is going to come down some day that the Principal has to sign off on the application, then it will go to his superior to sign off on the Principal's sign off then it will go to another level. When will all this stop. The investor acknowledge at every step now what they are purchasing. They acknowledge that an annuity is not a Mutual Fund. They acknowledge that the tax deferral in a qualified setting is not unique to this annuity. They acknowledge that they may incur federal tax penalty charges on surrenders prior to 59 1/2. They acknowledge that there are surrender charges and other expenses associated with the annuity. They acknowledge that the optional riders if purchased carry additional charges. Why isn't there some accountability on the investors part for the transaction.....I'm sorry, I forgot, this is a security contract and that the investor is presumed to be a dumb, innocent, taken advantage of person that is being manipulated by an extremely arrogant conniving salesman just out for the buck.

The characterization that Variable Annuities carries such a heavy cost is meaningless depending on the features of the contract. What would you consider to be an acceptable cost spread, (+) or (-) 20 basis points, 35 basis points, etc. between a Mutual Fund or Annuity.?

To infer that Variable Annuities are Automatically Unsuitable for 401(k), 403(b), 457, IRA's is absurb. You view this contract as a Duplication of Tax Deferral Benefits. Where should an Investor put his IRA or Qualified Money if he wants his family to receive his investment with a guarantee against loss.

There are many other benefits that appear to get a deaf ear such as:

A. The benefits of potential Annuitization, or

B. The ability to obtain a death or income tax reduction rider, or

C. To eliminate the transaction costs associated with Mutual Funds, or

D. To reduce estate or income taxes, or

E. To obtain guaranteed rates of return, or

F. To obtain benefits of no-cost dollar-cost averaging, etc. etc.

Many of your proposals directed at the apparant negatives of a Variable Annuity, ie. surrender charges, administrative fees, sales charges, tax consequences, et al. appear to be parroting the comments that are heard over the air waves of investment talk shows, or printed in the local financial papers or magazines, or comments of Fee only planners or brokers who don't believe in mutual funds, or any type of annuity.

I am not saying that there are not some miscreant individuals/firms in our business, so make the individuals or firms who violate the rules pay dearly but don't take it out on us who work by the rules. Ten to 15% of my cost of doing business goes for Securities compliance issues alone. I believe that is a heavy enough price to pay.

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