Axa to pay $20M fine for handling of variable annuities

A New York regulator alleges that the insurer limited the returns of legacy variable annuity clients

By Darla Mercado | *March 17, 2014*

Axa Equitable Life Insurance Co. on Monday agreed to pay a $20 million fine to the New York Department of Financial Services after the regulator accused the insurer of limiting returns for legacy variable annuity clients without proper notice.

Back in 2009, 2010 and 2011, Axa filed requests with the NYDFS to amend and restate the Plans of Operation for certain variable annuity contracts, allowing Axa to add its Tactical Manager Strategy. Axa's Tactical Manager strategy uses derivatives to lower volatility during rocky markets, aiming to smooth clients' returns.

Though the NYDFS had cleared Axa's requests at the time, the agency is now saying that the insurer failed to inform and explain to the department the significance of the changes brought about by introducing the Tactical Manager strategy to existing policyholders, according to an announcement from the NYDFS.

“For example, the filed requests to amend and restate the Plans of Operation did not address how existing policyholders who had not elected to invest in the ATM Strategy could end up invested in such funds,” the department noted in its March 17 consent order.

NYDFS only approved the filings because it believed the changes were “merely routine additions of funds and similar alterations,” according to the consent order.

Rather, the ATM Strategy can limit gains that a client would otherwise receive, according to the Department. Further, it may also lower the value of certain guaranteed benefits that are eligible for periodic benefit base resets; the client is only eligible for a benefit base reset when his or her account value rises, according to the consent order.

“The changes effectively changed the nature of the product that the policyholders purchased, yet Axa did not explain in its filings to the department that it was making such changes to its variable annuity products,” the NYDFS noted in the consent order. These filings affected “tens of thousands” of policies in the Empire State, the agency said.

A change of that magnitude would have required the NYDFS to put consumer protection measures in place, including requiring existing customers to opt into the revamped annuity instead of staying there by default, according to the agency.

The carrier has until April 1 to pay the civil penalty.

Axa spokeswoman Discretion Winter declined to make anyone available for comment, but referred to a written statement.

“Following regulatory approval of the availability of investment options that include the managed volatility strategy, the New York Department of Financial Services last year requested information as part of a post-approval analysis,” according to Axa's statement. “This request for information was previously disclosed in our public filings.”

“The NYDFS has completed its review and found that Axa Equitable should have communicated better to NYDFS when it made certain technical filings required under New York law,” the statement said.

In recent months, regulators at the Securities and Exchange Commission have signaled that they are keeping a close eye on product filings and updates to existing variable annuity contracts that could potentially curb investors' returns or hurt their ability to build their benefit base by keeping them from contributing more money to the contract. Further, the Financial Industry Regulatory Authority Inc. has indicated that advisers are still on the hook for suitability with respect to old variable annuity contracts that undergo updates and changes.