State insurance commissioners poised to approve annuity sales best interest rule

NAIC leader touts increased protections; consumer advocates say measure falls short

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By **Mark Schoeff Jr.**

State insurance commissioners are expected to approve in the next few weeks a model regulation designed to strengthen investor protections related to annuity sales, but consumer advocates say it falls far short of improving safeguards surrounding the often-complex products.

Earlier this week, a committee of the National Association of Insurance Commissioners approved a revised suitability in **annuity transactions rule** that would require insurance sales professionals to act in the best interests of consumers when making recommendations to buy annuities.

The model regulation says the insurance salesperson must act "without placing the producer's or the insurer's financial interest ahead of the consumer's interest." The measure outlines care, disclosure, conflict of interest and documentation requirements that would satisfy the regulation.

Under the rule, an insurance salesperson would have to "identify and avoid or reasonably manage and disclose material conflicts of interest" and would have to maintain a written record explaining the basis for the recommendation. A customer would have to sign a disclosure document that outlines the products insurance agents can sell and how they're paid.

The rule contains a safe harbor that allows registered representatives of broker-dealers who sell annuities to be in compliance with the NAIC annuity rule if they are in compliance with the **Securities and Exchange Commission's Regulation Best Interest**, which is meant to raise the broker advice standard.

The full NAIC is expected to approve the model rule next month. At that point, it will have to be adopted by individual states, a process that could take months or years.

Annuity sales are a bete noir of investor advocates. Although the products can provide a revenue stream that adds certainty to retirement finances, they also can be complicated and rife with high fees.

The NAIC model regulation "will make a substantial improvement in the obligations of the [insurance] producer in making a recommendation," said Doug Ommen, Iowa insurance commissioner and head of the NAIC's Life and Annuities Committee. "As a consumer protection advocate, this is going to go a long way in addressing some of the issues and concerns we've had in this market."

The NAIC began working on **the model rule** in response to the now-defunct Labor Department **fiduciary rule for retirement accounts**. Now

that the SEC has overtaken the DOL in setting advice standards, the NAIC is trying to stay in stride with the SEC.

“It’s in harmony with what the SEC did but goes a little further in providing clarity as to what the conduct standard actually is,” Mr. Ommen said.

But consumer advocacy groups rejected the model rule. The Center for Economic Justice and the Consumer Federation of America said in a **Dec. 4 comment letter** that the proposal “would do more harm than good by misleading consumers into expecting best interest recommendations that the standard does not deliver.”

The model rule does not improve on the suitability standard of care, said Birny Birnbaum, executive director of the Center for Economic Justice.

“The likely result of the model will be to unleash more unsuitable annuity sales,” Mr. Birnbaum, who served on the NAIC committee that hammered out the rule, wrote in an email. “What will change is that insurance producers will now be able to falsely claim they are acting in a consumer’s best interest when they have no legal obligation to do so.”

Supporters of the model rule said the disclosure and documentation requirements ensure that it is tougher than the suitability standard.

“This goes a long way to clearing up any confusion consumers might have about limits around products that can be distributed or around how agents are paid,” said Kevin Walsh, a principal at Groom Law Group.

The model rule garnered insurance industry support.

“We’ll see some significant improvements in the annuity sales process as a result” of the model rule, said Jason Berkowitz, chief legal and regulatory affairs officer at the Insured Retirement Institute. “This is going to require producers to defend the basis for the products they’re recommending.”

The industry already is acting in the best interests of its customers, and the model rule adds a layer of accountability, said Pat Reeder, deputy general counsel at the American Council of Life Insurers.

“The regulators are going to have more of an objective checklist to make sure the producers are doing the right thing for their customers,” Mr. Reeder said.

But David Lau, founder and chief executive of DPL Financial Partners, a commission-free insurance platform for investment advisers, said the model regulation does not do enough to protect investors.

“It still relies upon disclosure,” Mr. Lau said. “Everyone knows consumers don’t read disclosures.”

Barbara Roper, director of investor protection for the Consumer Federation of America, said the use of the term “best interest” is deceptive.

“Given how intent the industry is on maintaining their abusive sales practices, and how willing state insurance regulators are to support them in that, the only answer for consumers is to stay away from these products entirely,” Ms. Roper wrote in an email.

The current annuity suitability rule was adopted by more than 40 states, Mr. Ommen said.

The model rule should “be able to reach that level within a couple of years,” he said.