FACC Leads the Way Protecting Independent Producers and Consumer Choice

On February 13, 2019, the NAIC adopted the new Best Interest standards for annuity sales. The Fixed Annuity Consumer Choice Campaign (FACC) has been at the forefront of development of these new standards throughout the NAIC process. FACC submitted numerous comment letters and proposed edits to the model regulation as drafts were circulated by the NAIC Suitability Working Group. In addition, we traveled around the country to meet personally with more than two dozen regulators to advocate for preserving consumer freedom to choose independent agents and fixed annuities.

Throughout this two-year process, FACC remained diligently focused on advocacy for independent distribution because we steadfastly believe the independent insurance producer is the life blood of the fixed annuity marketplace. FACC is dedicated to maintaining free and unfettered access to insurance professionals who specialize in these uniquely beneficial retirement products.

FACC's guiding principles have been to:

- Oppose any best interest standard that would be essentially a fiduciary-like duty and invite runaway litigation;
- Protect independent agencies and producers who choose not to hold securities licenses;
- Define workable and objective requirements for both compliance and enforcement; and,
- Preserve choice – both for agents and consumers.

The dilemma has always been that a best interest standard is a poor fit for insurance agents. Fiduciary obligations like best interest have historically applied to services and not products. Fiduciary concepts are aimed at those who provide specialized services where duties of loyalty and prudence are paramount. This includes corporate directors, lawyers, trustees, and advisers. But seldom if ever are such standards applied to sales professionals or product recommendations where objective issues of cost and performance are paramount rather than undivided loyalty or conservation-oriented prudence. Best interest, as applied to products, only invites second guessing in search of "better" or "best" products that are ostensibly cheaper or perform better without regard for intricate choices that abound in a highly competitive marketplace.

However, FACC recognized there was a powerful movement towards "best interest" across the financial services industry and demand for "harmony" across different types of financial services providers. It was clear a best interest standard was inevitable for the insurance industry as state regulators sought to preserve their autonomy and authority over annuity sales practices. The NAIC moved to incorporate a best interest standard into the Suitability in Annuity Transactions Model. Even the large trades representing the annuity and life insurance industry supported a best interest standard making its adoption virtually unstoppable. Facing these circumstances, FACC set out to ensure that any requirements would be objective and reasonable for insurance producers and the carriers who support and rely upon independent distribution, while fostering consumer protection and meaningful disclosure.

The most significant protections in the model regulation sought by FACC and obtained through our advocacy are ***explicit provisions stating insurance producers:***

1. Will be afforded **a quasi-safe harbor** for meeting the best interest standard if they comply with the obligations of care, documentation, and disclosure and, in addition identify or avoid material conflicts of interest (you can find more details on these obligations at www.fixedannuitychoice.com).

2. Will **not be required to obtain any securities license** in order to comply with the new best interest requirements.
3. If ever challenged, will be **held to standards of producers with similar authority and licensure** and not compared to securities agents, investment advisers or other types of fiduciaries.

In addition, FACC worked with the NAIC to help ensure insurance companies could reasonably administer the rule's requirements without undue disruption for independent distribution. FACC specifically put forward and the NAIC adopted language that explicitly provides an insurer is only responsible for supervision of recommendations of its own products and this limitation on supervision also applies to comparison to or compensation paid for any product other an annuity issued by the insurer.

FACC advocated vigorously as well for other favorable provisions that help independent producers and their clients. We worked with industry and the NAIC Working Group to construct a new compensation disclosure template which is meaningful for consumers without adding needlessly cumbersome and confusing paperwork. FACC also worked to ensure that compensation in any form (cash commissions or non-cash compensation) was not considered a "material conflict of interest," but rather routine business practice that could be explained and disclosed as needed to the consumer.

FACC believes the new Best Interest model is reasonable, workable, and will not cause significant disruption to producers or their clients. FACC applauds the efforts of regulators for working with FACC and other interested parties to preserve state oversight of fixed annuities, provide meaningful and beneficial disclosures for annuity buyers, and offer standards of care and documentation that producers and insurance companies can understand and implement.

In coming months, FACC will work to support passage of the new model regulation in individual states and ensure its provisions protecting independent distribution and consumer choice remain intact. We will also monitor progress of the new model regulation to ensure protections under the Harkin Amendment adopted in 2010 under Dodd-Frank are not jeopardized in characterizing fixed indexed annuities as insurance and not securities products. The Harkin Amendment requires states to adopt these revisions in order for the Harkin Amendment protections to remain in force.

FACC remains concerned about one aspect of the new NAIC regulation. It contains a safe harbor for investment advisors and registered representatives who are not required to follow the new NAIC requirements as long as they comply with SEC rules. We believe any financial services provider that sells annuity products should be subject to the NAIC requirements which are not the same as the SEC requirements. We will be watching this issue and engaging when necessary to continue our mission to promote and protect independent insurance producers.

Please visit www.fixedannuitychoice.com for our previous blogs and comment letters on this and other topics connected with best interest and independent distribution.