When Selling Annuities Becomes Investment Advice: A Guide for Insurance Providers

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For insurance companies and agents, the distinction between selling annuities and providing investment advice can blur unexpectedly. When annuity sales involve discussions about a client's securities portfolio or recommendations to liquidate investments to fund purchases, agents may inadvertently trigger investment adviser registration requirements. Understanding the regulatory boundaries is essential for insurance providers selling annuities. Approximately one-third of states have issued bulletins, enforcement actions, or interpretive opinions addressing this issue.

The Core Issue: Securities Advice in Insurance Transactions

The fundamental concern is clear: when agents begin discussing, analyzing, or making recommendations about a client's securities holdings, they may be conducting investment adviser activity, even if their goal is simply to sell an annuity product.

Several states have made this explicitly clear in their regulatory guidance. Arkansas, for example, has stated that recommending the replacement of securities (such as mutual funds, stocks, bonds, and other investment vehicles) with other products constitutes offering investment advice. California has addressed situations where insurance agents conducted business as investment advisors by sending communications regarding the value of securities and advising clients to sell securities to purchase annuities. The state's guidance references SEC Release No. IA-1092, which provides criteria for determining whether someone is acting as an investment adviser. Nebraska similarly relies on SEC Release No. IA-1092 in its guidance.

State-by-State Prohibited Activities

Many states have issued detailed lists of prohibited activities for insurance-only personnel. Iowa specifically prohibits agents from (a) advising on securities or investment performance, (b) comparing securities with annuity contracts or life insurance policies, (c) recommending liquidation of specific securities, or (d) identifying specific securities that could be used to fund annuities. Tennessee, Vermont, Ohio, and Oklahoma have adopted substantially similar frameworks.

Enforcement Actions Serve as Warnings

States have actively enforced these boundaries. Massachusetts took action against an agent who published content suggesting he was qualified to give investment advice and advised investors to sell securities to purchase annuities. Idaho addressed agents who represented themselves as capable of

reviewing investment portfolios without proper licensing. New Jersey has established through enforcement proceedings that providers cannot recommend liquidating securities to fund annuities. North Carolina goes further, prohibiting agents from even inquiring about a consumer's current securities investments while gathering information for insurance documentation.

Creating Safe Harbor Through Best Practices

Kentucky offers a helpful roadmap to avoid unintentionally acting as an investment adviser: (a) agents should avoid (i) making recommendations to liquidate or transfer securities to purchase annuity products, especially when profiting from such advice and (ii) giving opinions or forecasts about securities or comparative performance between securities and insurance products and (b) agent can avoid enforcement action if agents (i) use only company-approved promotional materials, (ii) avoid recommendations about specific securities when discussing a client's financial situation, and (iii) provide signed boldface disclosures. The key takeaway for insurance companies is the importance of training and compliance protocols. Agents must understand that their expertise and licensing covers insurance products, and that advice about securities holdings, performance comparisons, or liquidation recommendations can trigger different regulatory requirements.

Conclusion

The regulatory landscape continues to evolve. Utah and Idaho have emphasized that agents selling variable annuities must be licensed both as insurance agents and as broker-dealer agents. All providers should review their state-specific compliance programs, marketing materials, and agent training to ensure personnel understand the boundaries of their licensed activities. By avoiding discussions about specific securities and staying within insurance expertise, companies can protect themselves from inadvertently triggering investment adviser registration requirements while continuing to serve their clients effectively.