NAVA Steps Up Its Lobbying Game

By Editor Test *Tue, Jun 9, 2009*

NAVA has moved from the Virginia suburbs to downtown Washington, the better to lobby Congress on behalf of annuity manufacturers and distributors. But the Association for Insured Retirement Solutions, as NAVA has called itself for the past two years, won't reveal its new name or acronym until July.

The big takeaway from NAVA's regulatory affairs conference at the ornate Mayflower Renaissance Hotel in Washington, D.C. this week was that the maddeningly complex regulatory regime for annuities is likely to get more maddening before it gets better.

Annuities are the duck-billed platypuses of the financial world, of course, and don't fit into any neat legal category. They are subject to overlapping state and federal regulations, insurance law as well as securities law, and two or three accounting standards.

One speaker compared simplifying annuity regulation to unscrambling a multi-colored Rubik's cube.

At any given moment, variable annuity issuers can find themselves answerable to 50 different state insurance commissions, the Securities and Exchange Commission and the securities' industry's "self-regulatory" organization, the Financial Industry Regulatory Authority, or FINRA.

Unfortunately, these regulators have proven to be ineffective at preventing really big financial catastrophes. Now Washington is abuzz with new regulatory ideas, like the creation of a "Systemic Risk" czar and the regulation of over-the-counter derivatives trading, and others, like federal rather than state supervision of big insurance companies, that pop up with regularity.

One novel problem for variable annuity issuers and advisers: how to deal with enraged contract owners who inadvertently canceled their living benefit guarantees when they drew too much from their accounts.

New address, new sense of advocacy

NAVA's new management team, led by Cathy Weatherford, has decided to respond to the fluid, high-stakes regulatory turmoil in Washington by becoming a more aggressive advocacy group for annuity manufacturers and distributors. The change is symbolized by the group's decision to relocate its headquarters this month to from Reston, Virginia, to 1331 L Street NW, Washington.

Weatherford, a former CEO of the National Association of Insurance Commissioners, is a registered lobbyist. So is her new general counsel, Lee Covington, and her yet-to-be named vice president of Federal Relations. As part of an overall "re-branding" effort, NAVA will even be changing its name in July to suit its new focus.

"We're going to be more engaged with Congress, and we're going to make sure our members' voices are heard," Covington told the 200 or so lawyers, compliance officers and regulators who attended the annual event. "We want legislators to be thinking, 'What would NAVA say on this issue?'

Covington, a native of Arkansas who has been Ohio Insurance Director, was an adviser to insurance companies at the Washington legal and lobbying firm, Squire Sanders and Dempsey before joining NAVA.

“We’re going to step into those shoes,” Weatherford said, referring to the lobbying responsibilities. Traditionally, the American Council of Life Insurers has been the main insurance lobbying firm.

There are plenty of issues for NAVA to wade into. Weatherford listed the Retirement Security for Life Act (HR 2205, S1010), the optional Federal Charter, the Systemic Risk Regulator, the defense of insurance product tax advantages, and FINRA’s desire to regulate independent financial advisors, as it regulates the activities of registered representatives of broker-dealers.

One of the over-riding issues is the question of whether the current regulatory arrangement, where state insurance commissioners monitor the solvency of insurance companies and the conduct of insurance agents, and the SEC, through FINRA, monitors the sale of insurance-linked securities by broker-dealers, should be simplified or even radically overhauled.

‘Is my annuity safe?’

Natty Gomes, a compliance manager from MassMutual who attended the conference, said she could not speak for her company, but she personally favored national regulation because complying with multiple state requirements creates expensive duplication. That could weaken oversight, she conceded, but “in this economy, it’s expenses that matter,” she said.

State regulation and federal regulation are both needed, several conference speakers said, because they have different missions. Kermitt Brooks, first deputy superintendent of the New York State Insurance Department, echoed the widely-held opinion that the 15,000 state insurance regulators protect consumers while the federal regulators protect investors.

“The feds don’t have the aptitude or the skill set for tackling consumer issues,” Brooks said in response to a reporter’s question. “While federal officials are good at regulating markets, they are not so good at consumer protection. And the last thing legislators want is people calling them to complain about auto insurance rates.”

“What we really need is more integration of the NAICs and the FINRAs of the world,” he added. “Regulation has become very interdisciplinary.”

The investor/consumer distinction can be seen in the way Federal and state regulators use different accounting standards when examining insurance company books. The SEC uses the GAAP method, which focuses on revealing a carrier’s ability to pay its creditors. The states use the SAP (Statutory Accounting Principles) method, which focus on a carrier’s ability to pay its claims.

Unfortunately, the question that many worried annuity owners are asking today—“Is my annuity in jeopardy when the share price of my insurance company drops?”—tends to fall into the cracks between the two types of regulators, said Heather Harker, vice president and associate general counsel at Genworth Financial. Part of the problem: SAP information about insurer strength generally isn’t available in the prospectuses of variable annuities.

Product change: both cause and effect of accounting change

This information gap could close soon, however, because the insurance industry is moving toward new accounting standards. Charges in accounting practices, arcane as they are to the average person, are already having a significant effect on variable annuity product design trends, said Tom Conner, partner at Sutherland, the Washington law firm, and former NAVA general counsel.

The use of derivatives in living benefit guarantees may have backfired on insurance companies, because it has attracted new scrutiny. Going forward, variable annuity issuers will need to change the way they value those derivatives, and they will have to use accounting methods that disclose a wider range of possible negative outcomes.

Both changes will increase the amount of reserves that insurers have to set aside for guarantees. Rather than undertake the burden of these complexities, insurers will simplify their products, Conner said.

If derivatives trading is more closely regulated in the future, Harker said, that could mean greater scrutiny of their use in new variable annuity contracts with living benefits. “If derivatives are regulated securities, how would that affect speed-to-market,” she said. “Especially if the derivative use plan has to be approved in 50 states?”

So far no one seems to be saying out loud that self-regulation of the U.S. securities industry needs to be reconsidered—perhaps because the SEC doesn’t have the resources to oversee the nation’s 563,000 registered reps. But Larry Kosciulek, director of investment companies regulation at FINRA, conceded to an interviewer during the NAVA conference that such an idea has been discussed “at higher levels.”

Kosciulek, a man of wry humor, has spent five years nudging a still-unfinished suitability rule for variable annuities toward completion, among other things. He admitted that FINRA is perceived as too close to the industry it polices. But he cited one benefit of that closeness: “The companies would never talk to the SEC as openly as they talk to us.”