Proposed Rule: Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities

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SEC,

At first, I thought this rulemaking was very positive and was impressed with the SEC's thoughtfulness. However, after digging further and reviewing the form, I am not sure that is the case. Now I see the rulemaking as a clear indication that the SEC hates these products, wishes to drive investors away from these products, and wants as little to do with them as possible.

How did I get there?

The cover page of the filing asks for a RILAs maximum loss potential. No other security requires that disclosure. Stocks and bonds only require a cross-reference to the risk factors section of the prospectus. Would you buy a mutual fund or ETF with that disclosure? "Beware: You can lose 100% of your investment!" While an Equity ETF is subject to greater risks than a RILA, those risks don't come until later in the prospectus and are not quantified. It just requires "Loss of money is a risk of investing in the Fund." Also, the maximum loss of a RILA is a theoretical figure you are using to scare investors. There has been no period in the last 100 years when these theoretical maximum losses would have occurred. When considering the materiality of disclosures, the SEC needs to consider the probability of loss, not simply the magnitude of loss.

The summary prospectus only permits disclosure if minimum crediting rates and not current rates which are several magnitudes of order higher than the current rates. Insurance companies need to have minimum rates because they do not know the rates the market will bear in the future (that is interest rates and the cost of derivative instruments). However, competitive pressures generally keep the current rates reasonable and well-above the minimum rates.

The SEC calls interim value adjustments a fee. It is not; it is a synthetic net asset value of an index option when an investor withdraws money in the middle of a term. If you want out, they will give investors the approximate fair value of the investment. That is not a fee. Forcing RILAs to show a 100% fee (as it can conceivably be if the underlying assets go to zero) is ridiculous. A fund's NAV can conceivably go to zero as well. You do not call it a fee.

The SEC will require an illustration of a RILA with a 5% cap and a 10% buffer. Caps have never been near that low. At present, fixed annuities guarantee more than 5%. Today, RILA cap rates are hovering just over 20%.

The SEC states that RILA performance is banned. What other investment has banned performance? It is one thing to employ reasonable guardrails, but banned performance is too far.

The mandate from Congress was to help investors make a knowledgably decision. However, your attempt at creating a disclosure form has a clear negative bias against these products.

A RILA is an investment with a risk/return profile like that of a balanced mutual fund. It provides some of the upside of the market with some downside protection. Yes, like a balanced fund, if the market has catastrophic performance, your RILA will perform poorly. Yes, if you pull your money out before the end of the term you have a little less certainty as to the RILA's value. That does not justify the level of risk warnings and terrifying language you are insisting on and require to be repeated over and over again. It is not the game of Russian Roulette you are making it out to be. Your own investor testing seems to show that these products operate as providing risk-managed exposure to an index.

If you want to insist on maximum loss disclosures and over the top risks, be even handed and do it for all securities, or at least those which have a higher risk profile such as funds, stocks, and the like.

The SEC proposed having these funds rely on 24f-2 and rule 485(b). They did this so they would only have to rarely review these filings. Piece of advice, give these products WKSI status, then you can review them even less. These products are marketed to retirement investors and are not subject to the same level of FINRA and Investment Company Act protections as variable annuities. The SEC should be looking more closely at these products; not trying to defame these products and then ignore them.

This rulemaking seems to be a warning to SEC-regulated entities, if you circumvent the SEC and go to Congress to push for reform, the SEC will do what the statute calls for, but you (the industry and perspective investors) will regret it.

Sincerely,

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