

Variable Annuities Still in the Crosshairs

March 31, 2014

For the first time in several years, variable annuities are not listed as a priority in FINRA's annual letter of regulatory and examination priorities. The omission from the January 2, 2014, letter may be partly due to the steady decline in the number of FINRA arbitration cases involving variable annuities—from 300 in 2009, to 174 in 2013—according to FINRA's website. Nevertheless, FINRA head Richard Ketchum continues to pointedly refer to variable annuities as a FINRA focus. And, the SEC Office of Investor Education and Advocacy issued a February 6 investor bulletin addressing what an investor should do before purchasing a variable annuity. Moreover, a significant proportion of qualified plan "rollovers" (principally from 401(k) plans to IRAs) involve variable annuities, and there are multiple indications that regulators are targeting those transactions. Such indications include:

- Prominent discussion of rollovers as a priority in FINRA's January 2, 2014, letter.
- FINRA's issuance during 2013 of two regulatory notices addressing concerns about financial advisers who encourage employees to roll over their qualified plan assets into IRAs without adequate disclosure or suitability analysis.
- A January 9, 2014 annual examination priorities letter issued by the SEC's Office of Compliance Inspections and Examinations (OCIE) that prominently announced plans to examine the sales practices of investment advisers and broker-dealers who target retirement-age workers to roll over their 401(k) plan assets into higher cost investments. OCIE's focus will include possible improper or misleading marketing, conflicts of interest, and suitability issues related to such transactions.
- A 2013 GAO report entitled "*401(k) Plans: Labor and IRS Could Improve the Rollover Process for Participants*" that also expressed concerns about advisers who do not adequately explain all available options or make suitability determinations.

With focus on rollovers coming from so many directions, variable annuity issuers may feel like they have a target on their back.

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