Selling Annuities Post DOL Rule

Threats to Brokerage General Agency and Independent Agents

I. Overview of Traditional Insurance Brokerage Pre DOL

The Broker General Agent (**BGA**), sometimes referred to as Managing General Agent (**MGA**), acts as an independent firm or contractor working for numerous insurance companies whose main function is to support the sale of one or more insurance products by select insurance brokers/agents (**producers**). Producers then sell the policies to their clients. BGA's can specialize in one segment of the insurance industry, or sell policies across a wide range of companies and products including fixed annuities, fixed index annuities and non-variable forms of life insurance.

In addition to providing basic sales support, most BGA's provide valuable additional services for individual producers, including taking online applications, processing and tracking of cases, providing immediate policy quotes and assistance in securing underwriting requirements. Higher end BGA's may provide more advanced services including, detailed policy analysis, research and case design, access to tax and legal specialists, education on products and advanced sales concepts and practice management utilities.

In some instances, there may be a third party independent marketing organization (**IMO**) that assists in sales support that is also cut in.

What they all share in common is that they are intermediaries in the distribution chain. They are involved in processing and sales support and they receive a portion of the total compensation in every transaction they process.

Compensation

Similarly, compensation follows the same hierarchy, all flowing from the Insurance Company (**Company**). The General Agent/BGA tier receives a negotiated override from the company on the business submitted. Producers receive "street level" compensation paid directly by the company and may share in a portion of the BGA's override in the form of an expense allowance. Generally, the total compensation in any given transaction is split between the BGA and the producer.

Functional Duties

The BGA's primary duties are to process insurance business acquired by agents and ensure that the applications are submitted to the company in good order (**IGO**). Equally important and valuable from the company perspective, is the ability of the BGA to develop business for the company by recruiting agents and supporting their sales. Notably, BGA's are not responsible for supervision of the agents they work with and are, therefore, not burdened with compliance duties beyond the aforementioned IGO requirements and ensuring that the agents are appropriately licensed in the jurisdictions in which they conduct business.

Probably more noteworthy is the fact that BGA's cannot appoint agents. Appointment of agents can only be effected by the Insurance Company, leaving them with plenary control of the agent as they can revoke that appointment at will.

Because they have no obligation to supervise and have no control over the agents, BGA's have enjoyed the enviable position of being able to receive substantial compensation for facilitating the sale of insurance products with very limited exposure to litigation and regulatory risk.

II. Impact of the DOL Fiduciary Rule on Sellers of Annuities

Now a Fiduciary

Clearly the most significant effect of the rule is the transformation of previously non fiduciary sales persons to a fiduciary status. Anyone that is involved in selling an annuity product to a qualified plan is deemed to be a fiduciary where such person **makes a recommendation** relating to:

- the advisability of acquiring, holding, disposing of, or exchanging, securities or other investment property, or invested after the securities or other investment property are rolled over, transferred, or distributed from the Plan, or
- how investment property should be invested after it is rolled over, transferred or distributed from the Plan, or
- the management of investment property, or rollovers, transfers, or distributions from a Plan, including recommendations as to the amount, form or destination of such rollover.

Affirmative duties pursuant to ERISA section 404 include:

- Acting solely in the interest of Employee Plan participants and beneficiaries, with the exclusive purpose of providing benefits to them (duty of loyalty).
- Carrying out duties with the care and skill of a prudent expert (or hiring an expert if necessary).
- Diversifying Employee Plan investments (unless clearly prudent not to do so).
- Following Employee Plan documents (unless inconsistent with ERISA).

Modification of Prohibited Transactions

The rule defines prohibited transactions for Employee Plans from Section 4975 of the IRS Code <u>and also applies them to IRA's.</u> It specifically prohibits:

- Selling, exchanging or leasing of any property between the Plan and a disqualified person.
- Lending money or other extension of credit between the Plan and a disqualified person.
- Furnishing goods, services or facilities between the Plan and a disqualified person.
- Transferring to, or use by or for the benefit of, a disqualified person, of any Plan assets.
- An act by a disqualified person who is a fiduciary whereby he deals with the income or assets of the Plan for his own interest or for his own account.
- Receiving any consideration for his own personal account by a disqualified person who is a fiduciary, from any party dealing with the Plan in connection with a transaction involving the income or assets of the Plan.

From the Perspective of the Independent Insurance Agent/Producer

The independent producer generally finds working with BGA's more desirable than a dedicated General Agent of a major insurance company. The payouts are higher, processes are streamlined, compliance is relaxed by comparison and the producer has access to significantly broader product choices to present to his or her customer.

The BGA's ability to attract and retain business from these independent producers has required them to excel in the delivery of these services in order to differentiate themselves from competitors. Traditionally, the independent producer's decision of where to place business pre-DOL was greatly influenced by three major factors: **Payout - Service - Product Selection**

All of this changed dramatically in April 2016 when the final DOL Fiduciary Rule was published. It imposes several new obligations on producers working with qualified plans, **the most significant being the duty to act in a customer's best interest, acknowledgement of a fiduciary status and having to place that business through a Financial Institution (Institution) recognized under the rule.**

Although insurance regulation occurs at a state level and varies by jurisdiction, it is universally accepted that suitability is the standard that must be met by the agent selling insurance products. That standard is well defined in the **Suitability in Annuity Transactions Model Regulation** promulgated by the National Association of Insurance Commissioners (**NAIC**) in 2010. It essentially mirrored the FINRA suitability rule 2310.

Put simply, the independent producer was free to recommend numerous commission based products to employee plans and IRA's, provided those recommendations met the suitability standard. If those products were non-securities like fixed annuities or indexed annuities being placed through a BGA or IMO, those transactions were subject to little or no supervision. A certification of suitability by the producer was sufficient.

The fixed insurance sales environment has always been more lucrative and compliance friendly when compared to other disciplines within the financial services industry. At the same time, FINRA's style of regulation and enforcement has been seen by many as increasingly severe and business unfriendly. Not surprisingly, this growing disparity caused many independent producers to consider withdrawing their securities licenses and pursue a fixed insurance only practice model. The advantages were compelling:

- Indexed product commissions can be as much as 4 to 5 times that of securities counterparts (variable annuities).
- Great sales support is available and bonuses are prevalent.
- No broker/dealer means less rules and restrictions, lower operating expenses and significantly higher net compensation.
- No FINRA also means less regulatory and litigation risk.

The disadvantages of that practice model are also compelling. The lack of a diversified portfolio of products and services to offer one's customer presents significant challenges in meeting even minimal suitability standards – remember affirmative duties of ERISA, section 404. In addition, it may give the appearance of a salesman more interested in commissions than acting in his client's best interest. My partner and good friend, Andrew Kalinowski, is a senior statesman in the insurance industry and one of the most knowledgeable in the brokerage channel. He has reminded me on countless occasions, "When you're a hammer, everything looks like a nail". While I was always amused by this little saying, it ended up being somewhat prophetic and the focal point of what is now the eye of the storm in our industry and the driver of the DOL rule **– Conflict of Interest**.

It's probably a good time to note that the value of qualified assets is over 24 trillion dollars! This is, by far, the largest and most sought after segment of investable assets. Every insurance company and bank is competing for their share.

As we now all know, it is very difficult to meet the fiduciary standard under the DOL rule in the presence of a material conflict of interest. Recommending commission based investments is inherently conflicted and, in its original form, was prohibited under the DOL rule. Due to the overwhelmingly negative response and significant lobbying efforts of the insurance industry, the final DOL rule included significant relief and limited options to those wishing to continue legacy product sales Those options will be examined in the next section. Post DOL, the independent producer will need to conduct qualified business under a "level fee arrangement", continue with brokerage business under an available exemption or find a "carve out" that fits his or her model.

III. Practical Options for the Insurance Only Producer

This section assumes that the Insurance Only Producer is NOT a career agent of an insurance company, a registered rep of a b/d, or an associate IAR of a Registered Investment Adviser. Agents of insurance companies, registered representatives of b/d's and IAR's are all affiliated with Financial Institutions that have the facility to accommodate the new requirements imposed by DOL. Specifically; they will be able to utilize "level fee" arrangements.

Choice 1 **"Best Interest Contract Exemption" (BIC)**

The BIC exemption provides relief from the conflict of interest prohibited transactions associated with a Fiduciary Adviser receiving compensation as a result of the Fiduciary Adviser's advice to a Retirement Investor, provided the Fiduciary Adviser satisfies the requirements intended to reduce the risk of biased advice.

The BIC has four primary requirements:

1. Documentation

Must enter into a written contract that includes each of the following requirements:

<u>Affirmative Acknowledgement of fiduciary status</u>

<u>Impartial Conduct Standards</u>

- The Fiduciary Adviser must provide investment advice that is in the **Best Interest** of the Retirement Investor, at the time of the advice.
- All compensation received by the Fiduciary Adviser and its Affiliates for the transaction **must be reasonable within the meaning of Section 408(b)(2) of ERISA** and
- **The Fiduciary Adviser's statements** about recommended investments, fees and compensation**,** Material Conflicts of Interest and any other matters relevant to the Plan's investment decisions, **are not misleading** at the time they are made.

<u>Warranties That:</u>

- The Financial Institution has adopted and will comply with written policies and procedures reasonably and prudently designed to ensure that its Advisers will adhere to the Impartial Conduct Standards.
- It has specifically identified and documented its Material Conflicts of Interest and has adopted measures to prevent such Material Conflicts of Interest from causing violations of the Impartial Conduct Standards.
- Neither the Adviser nor any Related Entity uses quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation, or other actions or incentives that encourage Advisers to make recommendations that are not in the Best Interest of the Retirement Investor.

2. Disclosures

<u>Initial Disclosures</u>

- State the Best Interest standard of care.
- Inform the Retirement Investor of their right to obtain copies of the Financial Institution's written policies and procedures and specific disclosures of costs, fees and compensation (including Third Party Payments) associated with the recommended transaction.
- Include a link to the Financial Institution's website and inform the Retirement Investor that the website includes model contract disclosures and copies of the Financial Institution's policies and procedures to ensure that its Advisers are meeting the Best Interest standard of care.
- Describe Material Conflicts of Interest and disclose any fees and state the type of compensation that the Financial Institution, its Affiliates, and its Advisers expect to receive, which may be done by reference to web disclosure.
- Disclose whether the Financial Institution offers Proprietary Products or receives Third Party Payments.
- Provide contact information for a representative of the Financial Institution.
- Describe whether or not the Adviser and Financial Institution will monitor the recommended investments.

<u>The above disclosures must be made when an account is opened, at the same time as or prior to the execution of the first transaction.</u>

<u>Website Disclosures</u>

The Financial Institution must maintain a public website that contains the following six items:

- A discussion of the Financial Institution's **business model** and the **Material Conflicts of Interest** associated with that business model.
- A schedule of **typical** account or contract **fees** and service **charges.**
- A **model contract** or other model notice that includes the terms required under the BIC Exemption. This notice must be reviewed at least quarterly and updated within 30 days if necessary.
- A written description of the Financial Institution's **policies and procedures** that accurately describes or summarizes key components of the policies and procedures

relating to conflict-mitigation and incentive practices in a manner that permits Retirement Investors to make an informed judgment about the stringency of the Financial Institution's protections against conflicts of interest.

- A list of all **product manufacturers** and other parties with whom the Financial Institution maintains arrangements that provide Third Party Payments for specific investment products, or classes recommended to Retirement Investors and a description of these arrangements. The description must include a statement on whether and how these arrangements impact Adviser compensation and a statement on any benefits the Financial Institution provides to the product manufacturers or other parties in exchange for the Third Party Payments.
- Disclosure of the **Financial Institution's compensation and incentive arrangements with Advisers** including, if applicable, any incentives (both cash and non-cash compensation or awards) to Advisers for recommending particular product manufacturers, investments or categories of investments to Retirement Investors, or for Advisers to move to the Financial Institution from another firm, or to stay at the Financial Institution, and a full and fair description of any payout or compensation grids. Information that is specific to an individual Adviser's compensation or compensation arrangement is not required.
- Compensation may be described by providing dollar amounts, formulas or other descriptions that reasonably present an accurate picture of the compensation incentives.

3. Notice to DOL

Before receiving any compensation in reliance on the BIC Exemption, the Financial Institution must **notify** the **Employee Benefit Security Administration of the DOL** of its intention to rely on this class exemption.

4. Recordkeeping

The Financial Institution must maintain for **six years** the records necessary to enable the DOL, IRS, or any fiduciary, participant, beneficiary, employer or employee organization, to determine whether the conditions of the exemption have been met. Failure to maintain the required records will result in the loss of the exemption only for the transaction(s) for which the records have not been maintained.

In order to rely on the BIC Exemption, the written contract and other communications **may not contain the following prohibited terms;** Provisions to arbitrate or mediate individual claims in venues that are distant or that otherwise unreasonably limit the ability of Retirement Investors to assert claims.

A waiver or qualification of a Retirement Investor's right to bring or participate in a class action or other representative action in a dispute with the Adviser or Financial Institution.

Exculpatory provisions disclaiming or limiting liability of the Adviser or Financial Institution for a violation of the contract's terms or of the fiduciary rules under ERISA.

Provisions that limit the Retirement Investor's recovery to an amount representing liquidated damages for a breach of contract claim. The agreement, however, may require an IRA customer to knowingly waive his or her right to punitive damages or rescission of recommended transaction.

A BIC exemption requires a Financial Institution to be a party to the contract. This is where it gets complicated. Under present interpretation of the DOL rule, a financial institution is one of the following:

- Bank
- Broker/Dealer
- Insurance Company
- Registered Investment Advisor
- Similar Institution

Unlike Registered Representatives of a b/d, Investment Advisors Representatives (IAR's), Registered Investment Advisors and career agents of an insurance company, the independent insurance agent, in some ways lacks direct affiliation with a Financial Institution. Of course, as an agent, he is appointed by a company and thus has affiliation but it's a little more nuanced. If an Insurance Company is going to assume the role of the Financial Institution behind the BIC, they will be assuming orders of magnitude increases in duties and liability. As a practical matter, companies are exploring all other options and determining which offers the best blend of risk and reward.

The insurance only producer must be affiliated with a Financial Institution in order to utilize a BIC and, when evaluating the aforementioned choices, is likely to apply additional criteria beyond Payout, Service and Product Selection**. Advisers, as fiduciaries, will be required to**

prove that they have acted in their client's best interest by documenting use of a reasonable process and adherence to professional standards in deciding to make the recommendation and determine that it was in the client's best interest.

The adviser, in evaluating these choices, will need to understand:

- The additional requirements of time need to fulfill his duties.
- The additional infrastructure needed to achieve compliance.
- The compensation compression that will result from lower fees and expenses.
- The increased exposure to litigation and regulatory risk.
- The increases in cost doing business in this area.
- The capacity and willingness of the Financial Institution to pick up some the administrative tasks.

Choice 2 **Utilize PTE 84-24**

This exemption permits insurance agents, insurance brokers and pension consultants that are parties in interest or fiduciaries, to affect the purchase of insurance or annuity contracts and receive a commission on the transaction. This exemption pertains only to **fixed annuity** contracts and specifically excludes variable and indexed annuities.

Conditions

- Neither the issuing insurance company nor the selling party may be a trustee (other than a passive trustee), administrator, discretionary manager or sponsoring employer of the purchasing Plan.
- The selling party must act in the **Best Interest** of the purchasing Plan.
- The selling party must disclose any **Material Conflict of Interest.**
- Statements by the selling party **may not be materially misleading.**
- The combined total distribution fees must not exceed **reasonable compensation.**
- The terms must be at least as favorable as available in a similar arms-length sale and product offered by other parties.

Documentation requirements

Written disclosures to the independent fiduciary of the Plan before the sale:

- Disclosure of any limitation on the products offered by the selling party (i.e., only a certain range of products, or only products of certain insurers).
- Disclosure of the selling party's commission expressed as a dollar figure, if feasible, or, if not, as a percentage of gross annual premiums, asset accumulation or contract value, for all relevant years, and disclosure of any fees paid to any other intermediaries by the selling party or the insurer.
- Disclosure of all charges, fees, discounts, penalties or adjustments applicable under the annuity.
- A written acknowledgment of the purchasing Plan, before the purchase date, of receipt of all the above items.

The above disclosures do not need to be provided for a second annuity purchase or increase in the original annuity, if executed within one year of the prior disclosures (unless the information has changed).

The selling party may receive only stated and disclosed commissions and not any other revenue sharing, administrative fees or marketing payments.

Choice 3 **No longer serve qualified plans**

In some cases, this may be the most reasonable option for the insurance only producer, as it provides the best risk/reward ratio and involves the least amount of effort. It can be business as usual, selling commission products to customers that are not qualified plans, without any change to the process or requirements.

Choice 4 **Become a Financial Institution or affiliate with one**

Practically speaking, the insurance only producer could become a **Registered Investment Advisor** and execute a BIC contract with his clients. In addition to selling commission products, they would be able to provide "**level fee advice**" which is another means of complying with the DOL rule. This option would require significant changes in his business model including:

- Additional licensure (series 65).

- Creation or acquisition of Written Policies and Procedures (**WSP's**).
- Creation of a functional compliance department.
- Become subject to audit and regulatory oversight beyond a state insurance department.

Similarly, the producer could become a **Broker/Dealer** which would require all of the above with the exception of a series 65 and:

- Be required to submit annual audit financials prepared by a PCOAB auditor.
- Acquire additional licensing related to operating a broker/dealer (Financial and Operations Principal) and a supervising principal.
- Maintain minimum net capital requirements according to the Securities Exchange Commission. (**SEC 15c3-1**)
- Comply with SEC record keeping requirements. (**SEA 17a-3 and 17a-4**)

Assuming this was an economically feasible option, there is a serious question as to whether or not a small firm exception would be available from the SEC or FINRA. In the present regulatory scheme, **self-supervision is not allowed**.

In short, the question will be whether to affiliate with or become a financial institution if the producer wishes to continue to work in the qualified market.

The initial cost of becoming an institution is significant time and effort, along with expenses ranging conservatively from tens to hundreds of thousands of dollars. Ongoing expenses related to infrastructure, personnel and regulatory compliance would be at least as much.

The advantages of affiliation include: access to existing compliant operations and more importantly, expertise. The disadvantage is loss of autonomy and diminished control of the adviser's book of business.

IV. Practical Considerations for the BGA

The BGA, like the independent producer, faces the same choices: affiliating with a financial institution, becoming one, or leaving the qualified marketplace.

The decision tree for the BGA is substantially similar to that of the independent producer as examined in the previous section with a few additional considerations.

Becoming a B/D or RIA has clear advantages for the BGA including:

- Autonomy.
- Control of the business model and culture.
- Ownership of the book of business.
- Larger portion of total compensation available.

The disadvantages are mostly economic. As discussed earlier, startup and operating expenses are substantial and may require significant augmentation of infrastructure. In addition, the loss of business during startup and transition could be substantial as well.

Another factor to be evaluated is organizational adjustment to a substantially more rigorous regulatory environment. The need for competent personnel overseeing compliance is critical for several reasons. Obviously, technical compliance with rules, regulations, recordkeeping and capital requirements is critical. Equally important and maybe more challenging, is creating a culture that recognizes the value of compliance as an essential feature of the organization that defines its ability to build and preserve business.

Strategic Considerations

Background

The client base of a BGA is comprised of producers that formerly were able to sell lucrative insurance products in the qualified market with relatively light regulatory requirements and a low amount of personal exposure to lawsuits. The risk/reward ratio was very favorable. The producer could focus most of his or her energy on developing business and sales as opposed to administrative duties.

The producer looked to the BGA for help in growing the business

Post DOL, the producer's attention will likely shift from a focus on maximizing profitability to preserving his or her practice. The producer's criteria for evaluating BGA's will be greatly expanded and include, among other things, compliance support, education, technical guidance, and professional expertise. In addition, environmental considerations will carry more weight as increased regulatory attention is given to screening the “business culture” of firms.

In 2015, FINRA began doing just that and rolled out a pilot program of examining member firms in regard to “culture” and atmosphere. They are now taking a closer look at the firm’s efforts to train and advance ethics and best practices. They are conducting interviews with executives, circulating questionnaires, and examining sources of revenue by products and services. In addition, the regulators are utilizing high tech surveillance to monitor sales trends and patterns of firms and advisors.

This should come as no surprise as FINRA executives have been lecturing the industry for years on the movement towards **principles based regulation** and away from rules based. A good example of this was the change in the suitability rule in recent years from rule 2310 to rule 2111. The new rule clearly is moving toward a quasi-fiduciary standard as it expanded the definition of “recommendation” to include consideration of strategies as well. Simultaneously, the criteria to be considered in knowing your customer were also expanded.

The regulators are now fine tuning their approach to surveillance and enforcement by focusing on risk assessment of qualitative data combined with pattern recognition software. Put another way, the producer whose book is concentrated in high commission products will have a bull’s eye painted on his back.

<u>Post DOL, the BGA’s services will be distinguished by the expertise, guidance, culture and ethical leadership they bring to the producers they serve.</u>

Practical Considerations

Necessity to compete will demand an expansion of products, services and support. The inability or unwillingness to offer securities and advisory services to their producers will place the BGA at a competitive disadvantage. This leaves the BGA wanting for status as a Financial Institution, which again can be accomplished one of three ways: buying one, building one, or affiliating with one. We have already reviewed the pros and cons from an operational perspective. Let’s consider the strategic elements.

1. Build

If one could afford the time and expense of starting one from scratch, it would allow them to craft the structure that most ideally suited their business model and afford them the highest degree of control and profitability.

Building from scratch involves considerable time and effort and necessarily a loss of business during transition. Because registration can take longer than projected, the risk of loss by attrition is high.

A popular consideration lately is forming an RIA. While it appears fairly simple and requires minimal licensing (a series 65), it also has technical requirements that may disqualify many. For many years, the minimum requirement of assets under management (**AUM**) for SEC registration was $25,000,000. Recently that was raised to $100,000,000! If that threshold cannot be met, one needs to register as an RIA state by state, which is substantially more reporting, paperwork and fees. In addition, there is rumor of this requirement being increased yet again.

Another risk that may be underestimated is the cultural transition as you are moving from a sales focused enterprise to a regulated entity that is extremely principles and process intensive. There is a universe of difference between a **<u>Salesman</u>** and a **<u>Fiduciary</u>**. Each has its strengths and importance and balancing these elements at an institutional level plays a critical role in its success or failure. Here is where experience and seniority carry a premium.

2. Buy

This option greatly reduces the risk of transition related losses and attrition. It also affords the same level of control and autonomy as building from scratch. In addition, a mature firm has already gained operational efficiency that simply takes time and experience to acquire. Another potential advantage is the ability to acquire experienced staff and enjoy the benefits of the professional and strategic relationships they have formed – good will.

The disadvantage of acquisition is the legacy risk that follows. Even a relatively small firm may have thousands of customer accounts – each bringing the risk of litigation. The ability to thoroughly assess potential regulatory risk that may be impending is very limited. The buyer would be highly reliant on representations made by the seller. Some of the litigation risk may be contained by contract in indemnification clauses, however, that would have no effect on regulatory risk.

3. Affiliation

This option may be the most efficient. It carries many of the benefits of buying an operational firm. In particular, expertise, trained staff and familiarity with the market and regulatory environment. The design of this relationship can be highly flexible and the distribution of duties and responsibilities is negotiable within reason.

The disadvantage of this option is the risk of exposure. In essence, the BGA is bringing an entire book of existing business and the producers with whom he has cultivated relationships. Depending on the size and power dynamic between the parent and affiliate, there is a risk of loss of control and even ownership of the business the affiliate brings. It is not uncommon for BGA's to be courted by larger organizations that boast size, strength and vast resources. While these may be appealing features, they may also present a threat.

While this option may present the greatest opportunity, it probably also presents the greatest risk. The BGA faces a terrible conundrum –the bigger the institution you are affiliating with, the greater the risk of being consumed by it.

Summary

The BGA faces challenges and inconvenient realities that have almost instantly materialized and has very little time to react to them. Some of these threats are serious and have the ability to not only hurt profitability, but also cause the extinction of the business. Even though b/d's are more equipped to deal with the challenges presented by the DOL, they are withdrawing registrations at an alarming rate. Some see this as a harbinger and point to other countries that have recently enacted similar legislation where the advisor attrition has been as high as 40%.

As always, crisis and opportunity go hand in hand. There is little disagreement in the industry, that there will be less players in the near future serving the qualified plans market. The independent channel will likely shrink while the larger institutions grow.

Large institutions are doing a bit of fear mongering these days while trying to appear to be helpful partners to the independent channel. Pardon my cynicism, but I think many of these "altruistic" gestures are actually predatory strategies designed to encourage the independents to fold their hands and sell out. You might think of this as a fire sale, and buyers with the wherewithal acquiring valuable franchises for cents on the dollar. They will do everything possible to make the independent believe that their time is running out.

While many may see this as a great time to cash out, I think it's a great time to be a seasoned independent. Those that are left standing will have a generational opportunity for growth and expansion of wealth.

Uniform Regulation Is Inevitable

Almost everyone agrees that the DOL has limited ability to surveil and enforce. Many industry observers believe that the SEC feels it was upstaged by the DOL who overstepped their role. This may explain the fact that the SEC is promising their version of a Fiduciary Rule soon. I think we can all agree that power and control are addictive and we can reasonably expect regulators to compete for that control. Keep in mind that FINRA is, by far, the largest and most effective regulator and the enforcement arm of the SEC. They have made overtures for years that they should be the sole regulator, and that argument is gaining steam as the SEC continues to complain of understaffing and lack of resources. In my opinion, oversight and enforcement of all RIA's and b/d's will be the domain of FINRA in the near future

The most intriguing question may be, what becomes of insurance producers? The answer may be determined by the course the insurance industry itself chooses. At present, they continue to compete for investment assets while trying to avoid traditional securities regulation mainly through the recreation of the indexed annuity. Notably, the present iteration of this product is a far cry from its ancestors and one of the most effective and sought after guaranteed income instruments, particularly attractive to qualified plans.

In 2008, the industry defeated SEC Rule 151A, which classified indexed annuities as securities rather than insurance. Emboldened by that victory, the industry has continued to design and heavily promote the product – mainly to retirement plans. Clearly, the DOL will erode that strategy and move the product closer to a classic security, at least with respect to retirement plans. It is becoming increasingly difficult for companies to escape the reach of FINRA. Ultimately, companies will likely need to retreat to selling traditional insurance products only or continue to sell hybrid products and embrace full securities regulation.

At any rate, the ambiguity and duplicative effect of multiple regulators in the financial services industry is serving only plaintiff's counsel and doing little to protect the public.

The good news is this is very survivable for those willing to evolve. The cost of survival is high and the reward is likely higher. It will require a major makeover for the BGA and the assumption of greater duties, accountability and liability. Even though the cost of doing business is going up and compensation is going down, the increases in market share of the survivors will more than make up for shrinking margins.

Part 2 of this paper suggests specific actions for “remodeling” broker/dealers and BGA’s to achieve Fiduciary Compliance and litigation risk management. It also examines the issue of conflicting regulation and standards affecting financial advisors and explains practical and adoptable processes, policy changes, and the tools required for transitioning before the April 2017 deadline.