

## Financial advisors report more calls from clients

A recent survey of financial advisors by a group that represents the annuities and life insurance industry found that 31% of polled advisors expect a significant increase in clients' interest in financial vehicles that offer guaranteed lifetime income.

In addition, almost half of the respondents predict there will be a "slight" increase in clients' interest in such products, and nearly one out of five advisors predict no change in interest.

Those are just a couple of the findings from the survey, sponsored by **NAVA**, that included the views of 1,545 financial advisors across the country and that focused on the advisors' views of their clients' behavior. The polling was done in the fourth quarter of 2008.

Here's a rundown of some of the other findings:

*(Survey, continued on page 4)*

## New registration category proposed for investment banking reps

**FINRA** is proposing a new "limited representative" category for people whose main activities are investment banking, a development long sought by those who believe the requirement to get a Series 7 license is too onerous for pros whose main task is investment banking. "Basically, you're testing people at the level of their responsibility," said consultant **John McGovern**, a former supervisor in a Financial and Operational Sales Practice unit of **NASD** who explained the rationale for the proposal.

"The Series 7 would be the equivalent of getting a commercial driver's license," said **Rick Nummi**, executive consultant at **Accounting & Compliance International**, based in New York. "These [investment  
*(Limited rep, continued on page 2)*

## More cooperation expected between SEC, FINRA due to their new leaders

The chances of exploiting the regulatory gaps between **SEC** and **FINRA** might diminish soon. **FINRA** and the **SEC** are more likely to share information with each other now that both agencies are headed by professional regulators with some common background - and that background is **FINRA**.

On March 16, **Richard Ketchum**, the CEO of **NYSE Regulation**, will become **FINRA**'s new CEO, replacing **Mary Schapiro**, who was appointed to chair the **SEC** (*BD Week*, Jan. 26, 2009). **Ketchum** is no stranger to **FINRA**, having served as chairman of its Board of Governors since **FINRA** was created in 2007, and having once been president of **NASD**. **Ketchum** further was one of the key architects of the merger of **NASD** with certain functions of **NYSE Regulation** to create **FINRA**. He also once served as the director of the **SEC**'s Division of Market Regulation.

*(Ketchum, continued on page 4)*

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**Limited rep** *(cont. from pg. 1)*

bankers] are like, 'Look, I just commute a block every six months'."

The plan for the more limited license has been under discussion for 10-to-15 years, noted Nummi.

An examination has yet to be developed for the new category. FINRA said the implementation date would be 90 days after the effective date of a future proposed rule to establish the qualification exam.

The Limited Representative-Investment Banking registration would result in a more targeted assessment of the competency of investment banking workers to do their jobs, and result in better service for investors, FINRA said.

Those who would be suitable for the new category are associated people whose duties mainly involve:

- 1) providing advice about, or facilitating, debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings, or
- 2) providing advice about, or facilitating, mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion.

The new category wouldn't cover people whose investment banking work is limited to public finance

offerings or direct participation program offerings, or people whose work is limited to effecting private securities offerings as those offerings are defined by FINRA rules, the self-regulatory organization said.

**Grandfathered in**

When the new registration is implemented, investment bankers who hold a Series 7 license will be grandfathered in and won't have to take the exam to get the Limited Representative-Investment Banking registration. For six months following the implementation date of the registration, those people can opt-in to get the new registration if they're still doing investment banking work, without taking the exam. Those who opt in would still retain their Series 7 license.

But if those investment bankers who have Series 7 licenses fail to take advantage of the six-month opt-in period, they must take the exam for the new limited registration if they want to continue doing investment banking work, FINRA said.

**No break for investment banking principals**

Those who want to act as a general principal for investment banking activities won't be grandfathered in, and will have to pass a new exam, FINRA said.

Nummi said he expects to see an exam that's more rigorous on investment banking subject matter than the Series 24 exam. On the other hand, he said he thinks the exam for the limited rep investment bankers might be a portion of what's on the Series 7

*(Limited rep, continued on page 3)*

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## Limited rep *(cont. from pg. 2)*

exam. “I think they’re lowering the bar on the bottom end, and raising the bar on the high end.”

The fact that the proposal says nothing about grandfathering in principals is significant, he added.

“From a speculation standpoint ... by not including specific language that the principals would be grandfathered, I think they’re sending a very subtle message that the knowledge required to oversee investment banking activity is going to be a couple of notches higher than it currently is today,” Nummi said.

The state of the economy explains why principals aren’t grandfathered in, he added. “In light of the malfeasance that’s occurred on Wall Street, I think FINRA’s going to take a much closer look at the type of activities that are occurring within the investment banking field and are going to require a much heightened principal knowledge requirement of those activities,” Nummi said.

A similar view about principals was expressed by McGovern.


“I think in this day and age where supervision and oversight is now taken ever more seriously, I just think, optimally speaking, anyone who’s in a position to supervise that type of business shouldn’t get a break.... [FINRA’s] feeling probably is, when it comes to principals and supervision, we cannot take any short cuts around that.”

Among other provisions in the proposal:

- ✓ Employees in certain training programs where they are rotated through certain business functions at firms, including investment banking, won’t have to register under the new investment banking category if they’ve been doing investment banking for less than six months. But firms would have to keep documents that show evidence of the dates these employees took part in the training activities; and

- ✓ Within the first six months of the registration implementation date, new limited rep candidates who are in the process of qualifying for the registration could take either the Series 7 or the limited rep exam. ■

## FINRA tells firms about their obligations regarding electronic postings

If your firm lets its reps post messages about securities or investing on blogs or bulletin boards, remember that such communications are considered by **FINRA** to be advertisements, the self-regulatory organization noted in a recent podcast .

This means there must be written approval by a principal before those communications are posted. Here are some other points FINRA would like you to keep in mind for such postings:

- ✓ Such communications can’t exaggerate or mislead and must disclose all material facts without omissions. And the identification of the broker-dealer affiliated with the rep must be clearly displayed. No forward-looking statements should be made, and customers must be given a sound basis to evaluate the product or service.

- ✓ Online postings may be subject to filing requirements. Example: Any posting about a mutual fund, variable insurance, or exchange-traded fund has to be filed with FINRA within 10 days of first use. So, make sure you have a supervisory procedure that enables your firm to monitor the content of such postings. That might mean establishing a rule that says workers can post only during certain times of the day, when the messages can be monitored.

- ✓ Train employees so they know that such postings are ads.

- ✓ Your firm is required to maintain ads as part of your firm’s records for three years after first use. So, you need a way to maintain copies of postings on blogs or bulletin boards.


- ✓ Chat rooms - seen by FINRA as different than blogs and bulletin boards - are like public appearances. This means there’s no strict FINRA requirement for getting messages approved before posting those messages. But reps would be governed by the principles that apply to speaking in person to a group of investors. And supervision *is* required. Your firm must know when somebody is participating in a chat room, and be prepared to monitor it.

If your firm lets reps use chat rooms, one way to see if they comply with the principles of public

*(Blogs, continued on page 4)*

**Blogs** (cont. from pg. 3)

appearances is to require the reps to seek permission on whether and when they can participate, and to send copies of their comments to compliance.

But this can be challenging because reps might be too hurried to seek permission, FINRA warns. So, if your firm allows such participation, you'll need supervisory procedures that address the issues of approval and record-keeping. Also make sure your reps are trained on your firm's policy. A tool you can use for this purpose is FINRA's *Guide to the Internet for Registered Representatives* .

✓ If your firm sponsors a blog or chat room, FINRA sees that as part of your business and a forum that needs to be supervised. If you allow non-firm people, such as customers or prospects, to post, you need to think about how to supervise their comments.

You could opt not to have outsiders post, allowing only your own registered reps to take part. Or you could require people from outside to register before being allowed to post any comments. That can allow you to get users to accept the terms of a user agreement. In that agreement, you can set rules for how the forum will be used with the warning that you can remove postings that pose a problem. ■

**Ketchum** (cont. from pg. 1)

A lack of coordination between FINRA and the SEC was one of the factors that may have contributed to regulators missing **Bernard Madoff's** alleged Ponzi scheme, noted **Chip Arvantides**, who was a special investigator in FINRA's enforcement division in Washington from 1999 to 2006, and who's currently executive vice president of **Frontline Compliance, LLC**, a regulatory compliance firm based in Alexandria, Va. Schapiro testified at her confirmation hearing that the SEC didn't share with FINRA the tips it received about Madoff running a possible Ponzi scheme.

Coordination between FINRA and the SEC "is something that I think has really been lacking," Arvantides said. He said the agencies need more joint efforts from the beginnings of investigations, similar to the way criminal law enforcement agencies set up task forces and mesh the talents of experts from the varying agencies.

Sometimes in the past, if the SEC and FINRA happened to each be investigating a firm on their own, with each devoting time and resources, each agency would be reluctant to cease its investigation. Then, they would try to work together but that could be difficult because each agency wanted "credit" for the issue at hand, Arvantides said.

He said Schapiro is trying to organize the SEC so it is more efficient, and suggested that Ketchum needs to do the same at FINRA.

Still another change Ketchum could bring to FINRA, Arvantides said, is an increased emphasis on trading and market regulation. For instance, the self-regulatory organization might scrutinize market-making closer, he explained.

Ketchum also is very familiar with large firms through his role as CEO of NYSE Regulation. "I think there's going to be more emphasis with respect to oversight of the larger firms and less expectations that they will be able to handle their own risk management and compliance," Arvantides said, adding that the current economic crisis shows that such a plan "didn't work too well." ■

**Survey** (cont. from pg. 1)

✓ 52% of survey respondents indicated that "some" of their clients believe they will have to delay retirement, while 36% indicated that very few, if any, of their clients believe that. One out of 10 advisors said "most" of their clients feel they'll need to delay retirement, and 2% said almost all of their clients believe their retirement must be delayed.

✓ Almost 85% of advisors said their clients think their future quality-of-life will get worse when they finally get to retire.

✓ Nearly 100% of advisors noticed an increase in clients' level of anxiety and more than 60% said their clients are contacting them with greater frequency. "Investors aren't just reaching out, rather advisors said that their clients are starting to listen more and placing greater value on their counsel," NAVA said in its summary of the findings.

✓ More than half the respondents said clients have made unwise decisions, despite their counsel.

✓ Almost half said clients have decreased asset allocation to equities, and more than 65% said clients


(Survey, continued on page 5)

## Survey *(cont. from pg. 4)*

have decreased new money invested since before the major market volatility started. But few if any clients are withdrawing their assets from their financial advisors. ■

## Insurance commissioners challenge SEC over indexed annuities rule

The **National Association of Insurance Commissioners** has joined in the fight over the SEC's decision to categorize fixed indexed annuities as securities.

The NAIC lawsuit , filed in the federal circuit court for the District of Columbia, is being consolidated with the lawsuit brought by a group of insurance companies that is challenging the rule on the grounds that the SEC violated the law in making that classification.

The rule, which is scheduled to take effect in January 2011, is being contested by the insurance industry because it would require sellers of fixed indexed annuities to have securities licenses, something that many in the insurance industry don't have.


In the brief filed by NAIC, the association argues that the SEC is in the wrong for the following reasons:

- ✓ insurance regulation is a matter of state law under the McCarran-Ferguson Act;
- ✓ the Commission failed to consider evidence that there were no widespread complaints, and there was no widespread abuse, regarding fixed-indexed annuities, and the SEC didn't consider protections already provided by the state regulatory system; and
- ✓ the Commission failed to address the inefficiencies that would be created by a dual regulatory system.

The SEC adopted the rule, saying there *was* widespread abuse in the sale of such products and that classifying the products as securities was necessary to better protect the public.

The insurance industry saw support of the rule as a way to edge insurance agents out of the market when it came to the sale of these products. Partnering with the NAIC is the **National Conference of Insurance Legislators**. ■

## Firm fined over its fee-based accounts

FINRA recently fined **Robert W. Baird & Co.** \$500,000 for supervisory violations relating to its fee-based brokerage business . The firm also was ordered to return \$434,510 in fees, plus interest, to 1,534 customers who paid fees in fee-based accounts without generating activity or who paid fees higher than those indicated on the firm's fee schedule.


The self-regulatory organization found that Baird failed to adequately review its then-fee-based accounts, called "360/One accounts," during the period when those accounts grew from about 7,000 accounts to more than 11,000 accounts. The firm allowed many of those customers to remain in its fee-based program despite conducting no trades for at least eight consecutive quarters for those customers. Those accounts paid more than \$269,000 in fees during the inactive quarters, FINRA said.

The firm also is accused of failing to have a supervisory system in place to automatically credit certain 360/One customers with breakpoint discounts that were specified in new account agreements, FINRA said. Fifty-three customers paid higher fees than those that were indicated on the Baird fee schedule, which resulted in total overpayments of about \$165,000, FINRA said.

Also, from May 1999 through January 2005, Baird failed to adequately disclose to its fee-based customers that assets held on margin and short sales were included as eligible assets in calculating fees. Baird terminated its fee-based brokerage account program in September 2007. ■

## President's budget seeks enhanced SEC staffing and technology

For Fiscal Year 2010, the SEC would get a 13% increase over its 2008 budget of \$906 million, under **President Barack Obama's** budget proposal, which was announced last week.

The budget document  released by the **Office of Management and Budget** said that in 2010, the SEC will "build its staff and technology resources and pursue a risk-based, efficient regulatory structure that will better detect fraud and strengthen markets."

*(Budget, continued on page 6)*

**Budget** (cont. from pg. 5)

New SEC Commissioner **Mary Schapiro** has emphasized the need to beef up the agency’s enforcement staff, saying at her Senate confirmation hearing that it’s “imperative” that the Commission be given the resources it needs to pursue those who “cut corners, cheat investors, and break the law” (*BD Week*, Jan. 19, 2009).

In a statement in response to the President’s budget proposal, Schapiro said, “We appreciate these additional resources that would help strengthen and reinvigorate the SEC and rededicate our commitment to the protection of investors.”

Detailed information about the agency’s budget won’t be available for a few weeks, a Commission spokesman said.

The budget document said the **Commodity Futures Trading Commission** would get a 44% increase over its 2008 budget level of \$111 million. It said the CFTC would fill gaps in regulatory oversight of energy and over-the-counter derivatives trading, as well as foreign exchange.

The day before releasing his budget proposal, Obama said he met with members of his economic team and some key leaders in Congress to discuss threats to the country’s financial markets and how the U.S. must transform the regulatory system to address those threats.

Obama asked his economic team to collaborate with Democrats and Republicans as the team shapes its recommendations for regulatory reform, so that members of Congress can “start crafting legislation in the coming weeks and months.”

Obama said the following principles will guide their work:

- ✓ Government needs to subject to serious oversight those financial institutions that pose serious risks;
- ✓ The regulatory system, and each of the country’s major markets, must be strong enough to withstand system-wide stress and the failure of one or more large institutions;
- ✓ The government needs to promote openness,

transparency and plain language throughout the financial system;

- ✓ Strong and uniform supervision of financial products marketed to investors and consumers must be implemented. Oversight should be based on data about how people make financial decisions;
- ✓ Strict accountability will be demanded, starting at the top. “Executives who violate the public trust must be held responsible” ;
- ✓ Regulations must be free of gaps, and the government needs to prevent those that are regulated from cherry-picking among competing regulators; and
- ✓ Other countries should be challenged to set high regulatory standards too. ■

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