
Hey there, insurance agent: We can make you an RIA

By **Gary S. Mogel**
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NEW YORK — A new firm is assisting insurance agents in becoming registered investment advisers so the agents can obtain fee income from advice and securities products.

That way, agents can circumvent broker-dealer production demands and NASD compliance. But the strategy may invite more regulatory scrutiny, some industry observers say.

Registered Independent Advisors LLC in Brainerd, Minn., this month sent e-mail solicitations to agents urging them to become RIAs by using the firm's administrative and training services. The e-mail links to the firm's website, where agents are told how they can avoid onerous broker-dealer oversight and NASD regulation — especially as it regards equity index annuities.

"Agents who become RIAs can avoid broker-dealer abuses that are coming from NASD 05-50," said Chuck Lucius, founder and chief executive of the company, referring to an NASD regulatory notice. The "abuses" include overly burdensome compliance and haircuts, he noted.

Herb Perone, a spokesman for Washington-based NASD, didn't return a call seeking comment.

Since NASD issued its August 2005 Notice to Members 05-50, it has taken an increasingly prominent role in regulating equity index annuities, including setting suitability standards and sending representatives to attend "free-lunch seminars," during which annuities are pitched to prospective clients.

Registered Independent Advisors assists agents with the Forms ADV, U-4 and other paperwork required to become RIAs, and it offers training materials to prepare them for Series 65 or other necessary licenses. Agents pay the firm a fee that varies according to the work and state involved, but that is usually in the \$2,000 range.

So far, about 60 agents of varying sizes throughout the United States have become clients of the firm.

"Most of our clients come from the fixed-annuity world," said Nate Lucius, who works at his father's firm. "A lot of them need a place to handle their equity index annuity business, but they don't want to join a broker-dealer."

Fiduciary differences

Some observers see loopholes in the firm's strategy.

"Registered investment advisers are fiduciaries, but insurance agents aren't," said Andrew Stoltmann, a securities attorney and partner with Stoltmann Law Offices PC in Chicago. A fiduciary has a duty to act in the best interests of the client, while an agent acts for the insurer, he added.

“For that reason, I’ve never heard of an RIA who sells EIAs,” Mr. Stoltmann said.

“To me, the act of selling an EIA is often a breach of fiduciary duty, because there are so few instances in which they are appropriate investments — especially for people over age 65,” he said. That is because of their complexity, high cost and long surrender periods, Mr. Stoltmann added.

But the elder Mr. Lucius said that the agent RIAs maintain separate advisory and insurance businesses, and disclose to clients “which side they are working on,” so there is no conflict. “Some people think that you have to be one or the other [fiduciary or non-fiduciary], but the fact is, you can be both,” he said.

“It sounds as if that company is downplaying the importance of the regulatory focus — to protect the public from incompetent or misguided sales practices. The marketing approach of this company assumes that licensure is merely a hurdle and that supervisory systems provided by broker-dealers are just speed bumps to be dodged,” said Rod Heggy, a securities attorney with Federman & Sherwood in Oklahoma City.

“No one is escaping regulatory scrutiny,” said the elder Mr. Lucius. The [Securities and Exchange Commission] and state insurance departments will regulate the agent RIAs, he noted.

“This deserves to be killed — early — in my judgment, because it will just heap more trouble on the annuity business and its agents,” said David Macchia, chief executive of Wealth2k Inc., a Hingham, Mass., strategic-marketing firm for annuities. The strategy — which seeks to skirt regulation and broker-dealer compliance hassles — will draw greater scrutiny from NASD, not less, he added.

The SEC can authorize NASD to extend its reach and start regulating RIAs that sell equity index annuities, Mr. Stoltmann said.

Also, though the firm states in its marketing materials that it isn’t an independent-marketing organization, Mr. Macchia is concerned that it may steer agents to IMOs with which it has a business relationship but which might not offer the best products for clients.

Chuck Lucius owns Independent Brokerage, a Topeka, Kan.-based IMO.

But the agent RIAs have no obligation to do business with that IMO, he said.

“The firm appears to be an RIA factory set up for industry people who are fed up with NASD,” Bill Singer, a securities lawyer with Stark & Stark of Lawrenceville, N.J., said about Registered Independent Advisors.

Agents are concerned that NASD regulation of equity index annuities will force them to wear two hats — insurance and investment — and that they will do so ineptly, added Mr. Singer, who works in his firm’s New York office.

Another potential drawback to agents’ becoming RIAs is that it may result in, or give the appearance of, “double dipping,” Mr. Stoltmann said. “The RIAs may be compensated both through annual advisory fees and commissions paid over the life of the EIAs.”

Another factor to consider is that agents’ errors-and-omissions insurance may not cover their activities as RIAs, Mr. Heggy noted. So a separate policy or rider may have to be purchased, he said.