

**■ OPINION**

# What To Do About Those 'Annuity Scoundrels'

BY JACK MARRION

**R**EVIEWING REGULATOR PUBLIC SPEECHES, lawsuit pleadings and reporter articles over the past year leads to one conclusion: Securities regulators, trial lawyers and the media are trying, in one way or another, to define who is a "bad" agent. In other words, how to differentiate a respectable annuity producer from an annuity scoundrel.

This makes me think: If one could identify what causes the outrage in these self-proclaimed annuity watchdogs, the industry might be able to eliminate it and assuage all the ill feelings of the Cerberus hounds. So, in that spirit, here is an assessment of what the watchdogs seem to think makes an agent an annuity scoundrel.

► **SELLS TWO-TIER ANNUITIES.** This one was mentioned most in news and reports in the past year. If an agent sells an annuity that requires annuitization to get all the interest or the bonus or the full death benefit, the agent absolutely is a scoundrel.

► **SELLS ANNUITIES WITH SURRENDER PERIODS LONGER THAN 10 YEARS.** Here, if the agent sells an annuity with a surrender period of over 10 years, the agent is a scoundrel and in roughly a dozen "10/10" states, the agent is an outlaw as well.

► **SELLS ANNUITIES WITH COMMISSIONS OVER 5%.** When securities salespeople are interviewed, they often bring up the fact that many index annuities pay 9% agent commissions and say that this is immoral.

In most cases, they say "immoral" because the highest commission the security salesperson can earn on most securities is 4% to 5%. But not to worry, the watchdogs have ignored the commission-envy part of this complaint and instead are playing ethics-by-commission-percentage (a surprising tactic, in light of the 33% commission that trial lawyers often earn). Hence, the rule:

**The solution is not to condemn an industry, but to go after the few bad apples and remove them from the tree**

If a commission over 5% is received, the agent is an annuity scoundrel.

► **HAS PROFESSIONAL DESIGNATIONS.** Long before the attack on designations appeared in a Sunday newspaper, concern was circulating about confusion over what various financial industry designations mean, specifically those including the word "senior." So, if an agent uses a professional designation with consumers, and if the designation isn't CFP, ChFC, or sometimes CLU, the agent is an annuity scoundrel.

► **CONDUCTS SEMINARS.** I haven't seen the word "hotel" used so negatively since reading about vice squad raids in the *Police Gazette*. But today, the watchdogs make a big deal

of the fact that agents ask people to attend annuity seminars, typically held at area hotels. What's worse, sometimes the agents even buy the people lunch. Such agents are, for sure, annuity scoundrels.

► **SELLS TO CONSUMERS OVER AGE 65.** Surprisingly, some of this negativity came about via efforts to protect retirees.

Back in 2003, the National Association of Insurance Commissioners drafted a Senior Suitability Model to provide certain standards in dealing with consumers over age 65. This was embraced by the industry. Somehow, though, this got twisted by some trial lawyers and security regulators, who said the model must mean that retirees shouldn't be allowed to buy annuities

at all. So it is that agents who sell to the over-65 crowd have become scoundrels.

► **BAD-MOUTHS SECURITIES.** It is one thing to give advice on buying or selling securities without the necessary training or registration. It is quite another to express an opinion that one doesn't like mutual funds because they can lose value in bad markets.

In the first instance, the agent may be acting as an unregistered investment advisor; in the second, the agent is exercising the first amendment right of free speech. Unfortunately, some security regulators seem to say that if the agent asks "would you prefer market risk or no market risk to your principal?" the agent must become securities registered. Those who don't are annuity scoundrels.

► **BAD APPLES.** So, there you have it. An annuity scoundrel sells two-tier annuities, or annuities with 11-year or longer penalties, or receives a commission higher than 5%, or has earned a designation, does seminars, markets to consumers over age 65, or tells consumers the reality that securities have market risk of loss.

The problem is, even though I could suggest some solutions to avoid the "scoundrel" label, I would never be able to get around all of the arbitrary definitions.

Moreover, I have a funny feeling that even if I could eliminate all the current labels, the watchdogs would simply change the rules again so an agent would continue to be an annuity scoundrel. After all, the loudest complaints about annuity scoundrels are coming from those make a living from selling securities in competition with fixed annuities. They don't want to give up turf, even if a fixed annuity is more suited to the customer's needs.

Yes, there are annuity scoundrels out there who prey on consumers. But the solution is not to condemn an industry. The solution is to go after the few bad apples and remove them from the tree. ■



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