

ETFs and Variable Annuities – A New Marketing Opportunity for ETFs

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On Tuesday, March 29, the U.S. House of Representatives passed the “Securing a Strong Retirement Act of 2022,” or, as it is already being called, “Secure 2.0.” Secure 2.0 builds on the important retirement security legislation that Congress passed in 2019 – the “Setting Every Community Up for Retirement Enhancement Act,” or the “Secure Act.” While Secure 2.0 chiefly addresses retirement-oriented products, it includes a provision that may create broad new marketing opportunities for ETF sponsors.

Currently, ETFs are widely available through IRAs and retail investor accounts. Retail investors, however, generally may not invest directly in ETFs within their variable annuity and variable life insurance products. ETFs are not available because Treasury Department regulations, which pre-date ETFs, have created a technical gap that prevents ETFs from being offered directly in variable insurance products. **Section 203 of Secure 2.0 directs the Treasury Department to amend its tax regulations to allow ETFs to be offered within variable insurance products.**

Granted, when we talk with ETF clients, “insurance products” is not a term that pops into mind. But retail mutual funds already have a massive presence as investment options within insurance products, and the range of mutual funds offered in these variable products is as diverse as in the retail mutual fund space.

The U.S. Senate is currently considering companion legislation for Secure 2.0. In anticipation of this legislation passing and becoming law, we believe many insurers will be looking to partner with ETF sponsors to develop new and innovative products, including ETF-structured annuity offerings that provide investors with lower-cost investment options within insurance products.

While other regulatory issues may need to be worked through, this seems promising. We would be glad to discuss the issues involved with structuring an ETF-based variable annuity product. For more information, please email **Tom Conner** at tconner@vedderprice.com, **Nate Segal** at nsegal@vedderprice.com or **Jeremy Senderowicz** at jsenderowicz@vedderprice.com or your Vedder Price attorney.

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