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Private Placement Life Insurance Will Get Through This: Michael Malloy

By Allison Bell

Michael Malloy is predicting that the private placement life insurance players will have good answers to policymakers' questions.

Malloy is the founder and director of **Expanded Worldwide Planning**, a firm that helps wealthy clients with PPLI policies and other life insurance arrangements.

Wealthy people can use PPLI to set up customized cash-value life insurance policies backed by a wide range of assets. Under Internal Revenue Service interpretations, they cannot have control over the manager of the funds in the policy. But the policy can invest in a wide range of assets, ranging from art, to land, to ownership stakes in private companies.

Sen. Ron Wyden, the chairman of the Senate Finance Committee, recently **asked PPLI issuers** whether they are marketing PPLI mainly as a tool for **ultra-wealthy families** to cut their taxes, and not to provide life insurance.

Malloy argued, in a defense of PPLI, that clients use the product mainly to pay estate taxes.

"Senator Wyden is doing his job by trying to ferret out bad actors connected to PPLI, but, in my experience, they are few and far between," Malloy said. "All the players I know who work with PPLI structures for U.S.-connected clients play by the rules."

Malloy earned a bachelor’s degree from the University of California at Riverside, then entered the financial services industry as a risk management consultant at Perkins, Carden & Minahen in Vallejo, California, in 1978.

In 1984, he set out on his own as the founder and principal at Malloy Insurance Services, an insurance agency that helps high-net-worth clients use life insurance-based planning strategies. He continues to own that firm, which has operations in New York; Oregon House, California; and the British Virgin Islands.

He formed Advanced Financial Solutions, a private-placement life and private-placement annuity advisory firm, in 2007.

In recent years, he has adopted the Expanded Worldwide Planning and EWP Financial brands to reflect his planning philosophy, which involves a focus on six principles: privacy, asset protection, tax shielding, succession planning, compliance simplification and trust substitute.

He reached out to ThinkAdvisor and other publications after news of the Wyden investigation broke, in an effort to clear up what he believes to be misconceptions about PPLI.

He answered questions via email about the PPLI market, the Wyden investigation, and what he thinks insurers, advisors and clients associated with PPLI arrangements should do now.

The answers to the questions in this interview have been edited.

THINKADVISOR: What kinds of clients would set up PPLI arrangements, and why?

MICHAEL MALLOY: For our firm, EWP Financial, it is generally clients with a net worth of $50 million or more.

Clients are looking for a more comprehensive solution that brings together all their advisors working to construct the best possible structure. Usually the advisors include asset managers, tax advisors and attorneys.

PPLI asset structures can enhance a family's financial goals. They can also bring valuable enhancements to the contributions that each of these advisors brings to the client's overall financial well-being.

For example, when the assets that the asset manager works with are placed inside a PPLI asset structure, they continue to grow tax-free, thus the asset manager gains what is termed alpha with no extra effort on his/her part.

For the tax advisor, the reporting of the client's assets is simplified, as the assets are now part of a cash value inside a life insurance policy.

For the estate planning attorney, there is greater asset protection and, in some cases, a simpler estate plan for the client, by having assets inside a life insurance policy.

Why don't clients buy $50 million in life insurance through ordinary channels?

The PPLI solution is more comprehensive than just the need for life insurance. PPLI asset structuring addresses elements of estate planning, tax planning and asset protection.

Why do you think Wyden is focusing on PPLI now?

I think that the **2021 fines leveled against Swiss Life** for its abusive PPLI policies are fresh in Senator Wyden's mind.

Swiss Life funded its PPLI with undeclared assets, thus avoiding both **Foreign Bank Account Report** and **Financial Crimes Enforcement Network** reporting requirements.

The policies also flaunted what has been termed the "investor control doctrine," which says that the policy owner can give an investment mandate to the asset manager, but the client is not permitted to choose individual assets in his portfolio.

The day-to-day investment decisions about the buying and selling of the assets are to be made by the asset manager and not the policy owner.

In recent years, the IRS has been investigating abuses in the areas of captive insurance and conservation easements.

As with PPLI asset structures, Sen Wyden is rightly looking at abusive tax schemes.

PPLI asset structures have been in place since the 1970s in various forms and have been previously under scrutiny by various government bodies, which has resulted in no major changes to these structures.

Over the years, mainly through court cases, areas of concern like the diversification rules and the investor control doctrine have been clarified and more closely defined.

Do you think that Wyden's interest will lead to anything or that it likely will sputter out?

My prediction is that it will sputter out.

All the professionals our firm works with follow the rules laid out in detail in the tax code. If bad actors are found out by the Wyden investigation, all the better for those of us who use PPLI asset structures to address the legitimate needs of our clients.

Those sections of the tax code that deal with these structures are very detailed. We follow these sections of the tax code very carefully in our structures.

Do you think some clients and arrangements will have an easier time than others? Who do you think will be affected, how, and why?

Arrangements like those that were promoted by Swiss Life might be discovered, and rightly so. These arrangements did not abide by the U.S. tax code and were designed to hide assets.

Our firm advises clients that attempting to hide assets will only draw more attention to them.

Our asset structures are designed to comply with all the rules and regulations that govern PPLI. These asset structures are designed to last many years, and, like a good building, must be constructed on a firm foundation.

We do everything possible to create this firm foundation for our clients.

How would you like to see life and investment services organizations respond to the Wyden investigation?

Answer Senator Wyden's questions honestly and completely.

If financial advisors or life insurance agents not familiar with the high-net-worth market discover that clients need $50 million in life insurance, what should they do?

My first suggestion is to have all the relevant advisors discuss the client's situation thoroughly, then, present the findings to the client.

A successful asset structure must address all the family's aims and concerns. If we need specific expert advice that is not available from this group of advisors, we add a new team member.

The asset structure's success depends on each member of the team understanding how the individual components of the structure fit together; they include financial, legal, tax and insurance elements.

We definitely don't wish to fit a square peg into a round hole later in the process. If all is on the table at the beginning, it helps to put the process on a successful course.

At what stage would someone call you?

Our advice is sought at different stages in a client's financial planning. We receive calls from all the professionals involved in the process. We also receive calls directly from clients.

Over the years, we have found that wealth creators are able to grasp the unique benefits of structuring their assets using PPLI quite readily.

Once they understand the considerable benefits and show willingness to come on board, we can then also educate their tax and legal advisors.

This process has proven itself to be more effective and expedient.

Wealth creators have an intuitive sense honed by many years of business experience. They understand complex issues without having to delve immediately into technical issues.

We can then provide their advisors with the appropriate tax codes and examples of the many structures that we have successfully completed if they so wish.

Most often, the advisors then readily come on board as well.

What would you tell a client now if that client seems to have a real need for $100 million in life insurance? Would you recommend that the client set up a carefully designed PPLI arrangement, or, in light of the Wyden investigation, would you recommend another strategy?

This decision would depend on many factors.

Working closely with a client’s tax and legal advisors, we would need to consider a client’s immediate needs for tax efficiency versus the long-term goals of estate planning and asset protection.

Since all of our asset structures comply with the tax code, we would not change any of our advice and recommendations in light of the Wyden investigation.

Pictured: Michael Malloy. (Photo: EWP Financial)