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NAFA Disappointed with SEC Closing Rule 151A Comment Period

Major policy shift on popular retirement instrument deserves full, open and careful deliberation. NAFA Comments Filed Today Underscore Key Shortcomings of the Proposed Rule

Milwaukee: The National Association for Fixed Annuities (NAFA) expressed strong disappointment over a decision yesterday by the Securities and Exchange Commission (SEC) to close a public comment period on Rule 151A concerning fixed index annuities. The action occurs amid broad public concern about the far reaching impact of the proposed rule and calls for an extension of the comment period by numerous financial services associations, state regulators, and Members of Congress.

NAFA Chair, Malott Nyhart observed, "In light of the significant legal and economic policy issues at stake, we are extremely disappointed that the SEC chose to seek to move this rule to adoption with only a very narrow window for comment."

"The proposal departs significantly from the Commission's 1997 statement on fixed index insurance products, and insurance companies have conducted their business in accordance with the release for more than a decade," Nyhart continued. "By not allowing a reasonable comment period, the Commission apparently discounted the reasoned views of numerous Members of Congress, small businesspersons, and state regulatory officials who requested an extension." In addition, an extension would have permitted the industry to conduct economic studies of cost-benefit factors in the absence of SEC rigorous analysis of whether the proposed rule promotes efficiency, competition and capital formation which Congress requires of the SEC

Fixed index annuities are useful to consumers because they help stabilize income by insuring consumer principal and accumulated minimum interest, while providing the potential for modest benefit from positive market changes. They can help consumers plan for future guaranteed income and to assure that wealth will be passed on to their loved ones.

The fixed index annuities are typically created by insurers, sold by insurance agents and regulated by state insurance commissioners. The SEC proposed Rule 151 A would extend SEC jurisdiction to include fixed index annuities

Proposed Rule 151 A was issued on June 25, 2008, and a public comment period that began on that date closed today, and the SEC is now in a final deliberation period closed to public comment.

Notwithstanding the short comment period, NAFA met the SEC's deadline and filed comments in opposition to the proposed rule earlier today.

NAFA's comments make a number of key points:

- The SEC's proposed rule reflects an improper analysis of the federal securities law.
- The Supreme Court of the United States has pronounced that annuities and other financial products, with characteristics like those of fixed index annuities and subject to comprehensive state regulation are not securities.
- The SEC has twice argued before the Supreme Court that federal regulation of financial products is not necessary or appropriate where governmental regulation – such as that provided by state insurance law – substantially eliminates the owner's risk of loss.
- The SEC's proposed rule fails to recognize the nature and extent of existing regulation of fixed index annuities under state insurance law. States regulate the insurers that issue, and the producers that market, fixed index annuities.
- In proposing this rule, the SEC has reversed its longstanding position that fixed index annuities are not securities. In 1986, the SEC held that that fixed annuities with index features that met the certain conditions could rely on the "safe harbor" provisions of Rule 151. In 1997, the SEC held that fixed index annuities had the hallmarks of traditional annuities and again declined to regulate fixed index annuities as securities.
- The SEC long-standing position, but not the SEC's proposed rule, is consistent with the intent of Congress. Congress did not intend the definition of "security" to include insurance and annuities.

NAFA was created to provide training, education and foster better understanding of fixed annuities including declared-rate, index and payout. It is the only independent, non-profit organization dedicated exclusively to the education and promotion of these unique insurance products.

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