

SUMMARY REGARDING SEC PROPOSED RULE ON INDEXED ANNUITIES

- Comment Period Ends September 10, 2008 unless extended (SEC could adopt rule as published; withdraw or amend Proposed Rule); Proposed Rule could be effective 12 months after final rule published (SEC has requested comments on whether date should be sooner or later)
- Would only affect annuities issued after 12 month date (unless revised)
- 96 page proposal and justification:
<http://www.sec.gov/rules/proposed/2008/33-8933.pdf>
- SEC says that “when the amounts payable by an insurer under an indexed annuity are more likely than not to exceed the amounts guaranteed under the contract, the majority of the investment risk for the fluctuating, equity-linked portion of the return is borne by the individual purchaser, not the insurer. The individual underwrites the effect of the underlying index’s performance on his or her contract investment and assumes the majority of the investment risk for the equity-linked returns under the contract.”
- New Rule would define the terms “annuity contract” and “optional annuity contract” under the Securities Act of 1933.
- 1986 Safe Harbor Rule (Rule 151) if an annuity contract was issued by a state regulated insurance company and:
 - (1) The insurer assumes the investment risk under the contract; and
 - (2) The contract is not marketed as an investment
(Under 151, an insurer was deemed to “assume risk” if:
The insurer, for the life of the contract guaranteed the principal amount of purchase payments, etc; credited a specified interest rate at least rate under state law; and did not modify, more than once a year, the guaranteed minimum rate of interest”)
- SEC says that indexed annuities are not entitled to rely on Safe Harbor Rule because they fail to satisfy the requirement that the insurer guarantee that the rate of any interest to be credited in excess of the guaranteed minimum rate will not be modified more frequently than once per year
- **NEW PROPOSED RULE 151 A** would essentially define any annuity that is based upon an index or security to be a security. The rule would apply whenever any amounts payable under the contract under any circumstances, including full or partial surrender, annuitization, or death are calculated, in whole or in part, by reference to the performance of a security or securities.

THIS IS A BRIEF SUMMARY ONLY. CONSULT PROPOSED RULE FOR ACTUAL DETAILS

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