

August 19, 2008

**URGENT ALERT**

**The SEC needs to hear from you that the market for  
Fixed index annuities should not be disrupted**

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To: All Companies Marketing Fixed Index Annuities:

From: Kim O'Brien, Executive Director

The Securities and Exchange Commission, commonly known as the "SEC," has issued Proposed Rule 151A that is poorly crafted and which poses a grave risk to the fixed index annuity market. **We need your help writing letters to the SEC right away and request an extension – before the comment period expires.**

***What's at Stake:***

Some issues of concern about Proposed Rule 151A are:

- The rule is overly broad and disregards years of safe harbor rules.
- It would regulate fixed index annuities as securities, even though they have no market risk. This will add an unnecessary layer of regulation to these products. It will also confuse consumers about how index annuities function because the consumer's principal and interest are guaranteed by the insurance company once credited to the fixed index annuity.
- The SEC's proposed rule appeared without warning following a decade of silence by the SEC. The SEC has allowed a very short time period for comment against the proposed rule before it may take effect. The proposed rule uses a new, unprecedented two-pronged test to determine whether the index annuity will be considered a security. The test is confusing. The test also ignores the U.S. Supreme Court and other judicial decisions which have clearly stated fixed index annuities should not be regulated as securities. For many years, states have regulated fixed index annuities and other fixed annuities. This new rule would potentially establish a new precedent that could be broadly applied to all annuities and interest-crediting life insurance policies taking all regulation of annuities away from the states and making them all subject to securities regulation.
- The proposed rule would require individuals and companies that wish to remain in the business of offering indexed annuities to become licensed securities representatives and dealers. This is a very time-consuming and expensive process.
- The SEC proposes that, should the rule take effect, products would need to comply no later than 12 months after publication of the rule in the Federal Register, which is shortly after adoption. However, the SEC asks for comment on whether the effective date should be sooner or later than 12 months after such publication.

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NAFA was created to foster a better understanding of fixed annuities. It is the only independent, non-profit organization dedicated exclusively to the promotion of these unique products.

## ***Guidelines for Preparing Your Letter:***

- Use your own words. Your business may be uniquely affected by this proposed rule and so your individual experiences and concerns are very important to voice. Please do not simply cut and paste the below messages, because repetitive letters or form letters will have much less impact and credibility than individually-written letters.
- Use your company letterhead. In your letter provide a few facts about your company, including, for example, your market area, number of customers, length of time in business, and number of employees.
- The tone of your letter should be logical and persuasive argument, and should not be emotional or confrontational.

## ***You may wish to make some or all of the following points, using your own words:***

**Fixed index annuities are excellent products.** Fixed index annuities offer many advantages to consumers, including protection against market risk and income tax deferral. The value of fixed index annuities for consumers has been underscored by the recent experiences of the economic downturn when securities have decreased in value significantly.

**Proposed Rule 151A creates a new unnecessary layer of regulation that will cause consumer confusion and economic disruption.** The consequences of the SEC taking on a regulatory role of fixed index annuities over the current system of state regulation and oversight are likely to confuse consumers about what constitutes a market-risk security. The required changes for insurance carriers and producers will dramatically increase costs for those who sell and buy these annuities.

**Proposed Rule 151A is not legally supported.** It does not make sense for annuities that have no market related downside risk to the consumer to be treated as securities. Fixed index annuities are unlike other products where the consumer bears such market risk.

**Proposed Rule 151A has not been appropriately vetted for comment and is being rushed to adoption.** The proposed rule appeared unexpectedly and with a very short comment period. The proposed rule represents a significant potential impact on the financial services industry and consumers and deserves adequate time for examination and analysis to determine the extent of its impact.

**Criticism of fixed index annuities, while of concern, has been exaggerated,** and the few documented instances of fixed index annuity market abuses – similar to abuses which on occasion do occur for all financial products including those regulated by the SEC – have been largely corrected for fixed index annuities. State regulators have worked hard to put in place logical controls, and the products have evolved to further meet consumer needs. States have in place resources to respond to consumer concerns and provide local and thorough investigations of consumer complaints.

**The SEC is required by law to take into account the benefits and cost of the regulation.** The benefits listed by the SEC are: (i) enhanced disclosure of information needed to make informed investment decisions about indexed annuities; (ii) sales practice protections would apply with respect to those indexed annuities that are outside the insurance exemption; (iii) greater regulatory certainty with regard to the status of indexed annuities under the federal securities laws; and, (iv) enhanced competition. The release included a brief overview of the SEC's assumptions on cost, but did not set out a thorough economic impact analysis regarding duplicate regulation and the promotion of efficiency, competition and capital formation. An extension of the comment deadline is essential to develop a complete analysis.

### ***Where to Send your Letter***

#### Electronic comments:

1. Use the Commission's Internet comment form(<http://www.sec.gov/rules/proposed.shtml>)
2. Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-14-08 on the subject line
3. Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper comments:

Send paper comments *in triplicate* to:

Secretary, Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

All submissions should refer to File Number S7-14-08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method.

Please share a copy of your letter with NAFA by emailing a copy to [kim@nafa.us](mailto:kim@nafa.us).

***Thank you for your help!***