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September 10, 2008

The Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Regarding File Number S7-14-08

I oppose Rule 151A on the following premises:

1. The SEC misrepresents fixed indexed annuities (FIAs) by:
    a. Overstating the investment risk found in FIAs.
    b. Understating the insurance protection offered in FIAs;
2. More regulation is not necessarily better than less regulation. Likewise, federal regulation is not necessarily better than state.
3. The SEC fails to justify the added costs of regulation change with potential benefits.

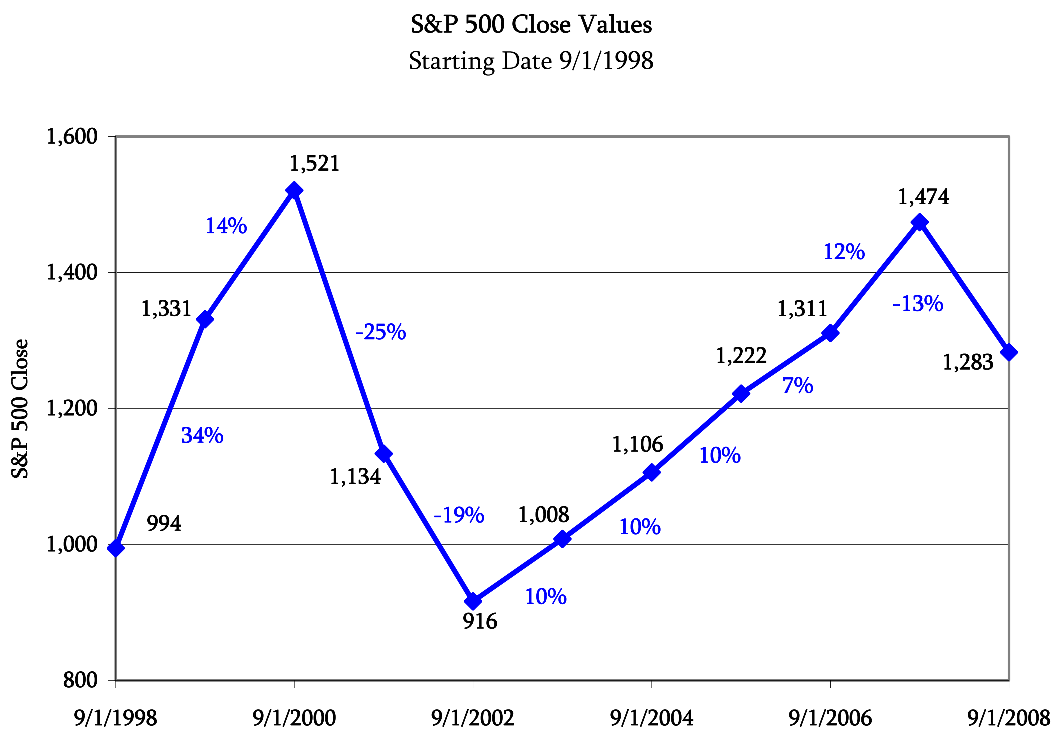
Unless otherwise stated, quoted phrases are from Proposed Rule 151A.

1a: Investment Risk – Volatility of Securities Index

"Individuals who purchase indexed annuities are exposed to significant investment risk." Investment risk is *"the volatility of the underlying securities index."* The SEC does not clarify what "significant" means. However, it is clear that the investment risk inherent in an FIA is significantly less and different than the investment risk found in variable annuities, stocks, and mutual funds.

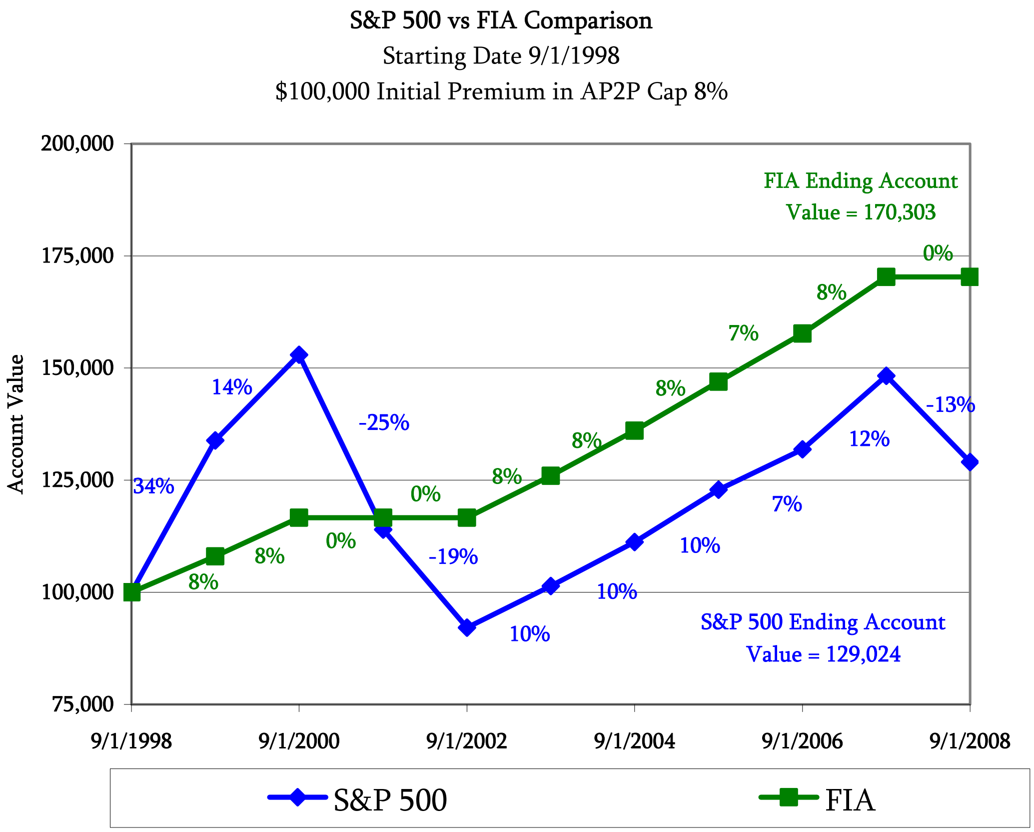
Volatility

Volatility measures the distribution of returns for a security or index. In other words, it measures the market's bounciness - its ups and downs. The higher the volatility, the higher the risk, and the higher potential reward. The chart below shows historical S&P 500 close values over the last ten years on an annual basis, ending September 1, 2008. S&P 500 close values are in black while gains and losses are in blue. This does not account for dividends.



Source: finance.yahoo.com

The S&P 500 had significant decreases (-25%) as well as significant increases (34%) over this ten-year period. The next chart compares $100,000 invested in the S&P 500 Index with $100,000 deposited in an FIA using the Annual-Point-to-Point with a cap crediting strategy over this ten-year period. The cap was assumed to be 8% for all ten years. Currently, this crediting strategy with this adjustment is offered by many insurance carriers. Some carriers are offering caps as high as 10-11%.



FIA volatility was significantly less than for the funds invested in the S&P 500. FIA interest credits ranged from 0% to 8% instead of the -25% to 34% found in the S&P 500 itself. Since volatility is lower, risk is lower, and the potential reward is lower. This case is a rare example of when an FIA can outperform the underlying index.

The key point is that **the lowest interest credit an FIA client can receive is 0%**. Investments in variable annuities, stocks, and mutual funds can lose value. It is clear that the investment risk associated with an FIA, if any, is significantly less and drastically different than that associated with variable annuities, stocks, and mutual funds. An FIA client CANNOT lose money due to the interest credit calculation. It is a falsehood to contend anything else.

That being said, volatility is found in other traditional fixed savings vehicles. Traditional fixed annuities are specifically excluded from SEC oversight. They can offer rates that change annually based on the bond portfolio backing the insurance company's assets. A good approximation for an insurance company's bond portfolio is the ten-year Corporate A bond. I do not have a long history of historical corporate bonds, but the ten-year Treasury provides a good approximation, with the understanding that corporate rates will be higher since they are riskier. Since 1953, the ten-year Treasury rate has been as low as 2.29% and as high as 15.32% (http://www.federalreserve.gov).

I own a savings account that has offered APRs as low as 3.00% and as high as 4.50% over the last three years. These rates are declared as often as the company would like to declare them and are derived from short bond rates. They can also increase or fall close to 0% - which sounds strikingly similar to the FIA and traditional fixed annuity described above. The volatility associated with FIAs is significantly less and different than variable annuities but **significantly similar to traditional fixed savings vehicles**.

Excess Interest

"When the amounts payable by an insurer under an indexed annuity contract are more likely than not to exceed the amounts guaranteed under the contract, the purchaser assumes substantially different risks and benefits."

Since excess interest is being used to determine whether an annuity is an annuity, let's be clear that **excess interest is not unique to FIAs**. Excess interest occurs in all fixed annuities that do not offer multi-year guarantees. Traditional fixed annuities, again, are specifically excluded from SEC oversight. The FIA client is no different than the traditional fixed annuity client in this regard. As stated above, FIA excess interest volatility is more similar to traditional fixed volatility than variable annuity volatility.

What is so bad about excess interest? Excess interest means that the insurance company is providing more client value than is guaranteed. This is a good thing. If excess interest is a point of concern, I'd like to see the number of complaints against fixed annuities regarding credited interest exceeding guaranteed.

1b: Insurance – Protection Against Risk

"Insurance provides protection against risk, and the courts have held that the allocation of investment risk is a significant factor in distinguishing a security from a contract of insurance."

Two items stand out when distinguishing an insurance contract from a security:

1. The guarantees that an insurance company provides (the insurance);
2. Who assumes the investment risk – the insurance company or the individual?

Guarantees

Insurance protection offered by FIAs has been understated by the SEC. Fixed annuities, including traditional fixed and FIAs, are subject to state nonforfeiture laws that prescribe a minimum cash value that must be provided to fixed annuity owners. At issue, a client knows the minimum amount she will receive if she surrenders her fixed annuity after one year, ten years, and any year in between or after. This protection provides ease of mind for clients seeking safety and preservation of principle. **The insurance company bears the risk of providing this guarantee**. Quite simply, this guarantee provides insurance.

Fixed annuity insurance companies provide other guarantees as well:

- Annuitization benefits when the contract reaches maturity or at client election;
- Many products guarantee that the client can withdraw 10% of the annuity's account value each year after the first, free of any withdrawal penalty;
- Nursing home, terminal illness, and unemployment liquidity options if the insured experiences unfortunate life events;
- Lifetime withdrawal benefits that provide lifetime income while offering more flexibility than annuitization.

"As sales have grown in more recent years…guarantees provided by indexed annuities have been reduced." Increased sales and lower guarantees are not correlated. Assets backing fixed annuities include bonds. In the early 2000's, bond rates declined. It became

increasingly difficult for insurance companies to pay the guarantees offered to their clients. In order to ensure stability that clients would receive their promised benefits and that stockholder investments would retain their value, the NAIC responded by drafting nonforfeiture laws. This timely and diligent response recognized that affordable guarantees are a function of bond rates, specifically the five-year Treasury Constant Maturity. Some carriers have chosen to offer guarantees far exceeding the nonforfeiture law. Guarantees are offered as high as 100% of initial premium accumulating at 3% annually.

"The rule would apply whenever any amounts payable under the contract under any circumstances, including full or partial surrender, annuitization, or death, are calculated…by reference to the performance of a security." It must be pointed out that the surrender value of a fixed annuity is based on the nonforfeiture law, which refers to the five-year Treasury Constant Maturity. The five-year Treasury Constant Maturity is a security – a security that cannot go negative. Therefore, any fixed annuity that complies with the nonforfeiture law would be subject to this rule if it is adopted in its current fashion.

<u>Risk Assumption</u>
A significant distinction between FIAs and variable annuities is who assumes the risk. *"Where an investor's investment in an annuity is sufficiently protected by the insurer, state insurance law regulation…are relevant."*

"An insurer is deemed to assume the investment risk under an annuity contract if…,
1. *The insurer, for the life of the contract,*
    a. *Guarantees the principal amount of purchase payments and credited interest…*
    b. *Credits a specified interest rate that is at least equal to the minimum rate required by applicable state law; and*
2. *The insurer guarantees 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."*

The SEC does not fault FIAs regarding items 1a and 1b. However, the SEC believes FIA rates are modified more frequently than once per year. FIA fixed rates and interest crediting adjustments are declared annually, at the beginning of the contract year. They are not declared more frequent than annually but may be declared less. For interest crediting strategies based on an underlying index, the client knows what adjustment will be used to calculate her interest credit but will not know the interest credit until the end of the year. **While the S&P 500 index may change daily, the FIA's account value will change no more frequently than annually**. No interest is credited until the end of the contract year. For example, if the S&P 500 increased 7% during month one and fell 10% during month two, the FIA client's account value is unchanged. FIA interest crediting adjustments are declared once per year and interest credits are determined once per year.

"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." A major distinction between FIAs and variable annuities relates to general vs. separate accounts. In a variable annuity, the investor's premium is held in separate accounts, which are securities that can increase and decrease in value. The entire gains and losses are passed on to the investor.

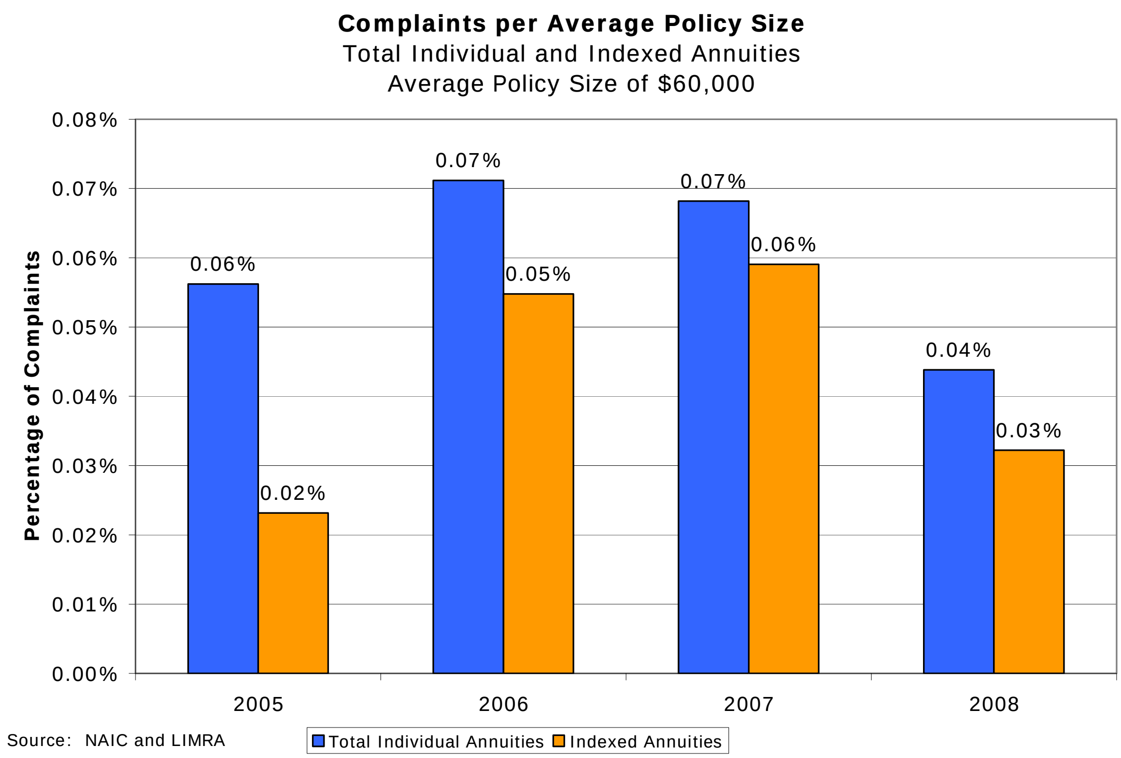
An FIA client's premium is held by the insurance company in its general account, which is backed by the insurance company's conservative assets. While the interest credit calculation may refer to the S&P 500 index, no premium is invested in the S&P 500 index. This premium is essentially underwritten by the insurance company in two ways:

1. The FIA client cannot receive an interest credit less than 0%;
2. Minimum guarantees regulated by state nonforfeiture laws.

The individual in no way underwrites the underlying index's performance. The insurance company assumes the risk that the underlying index does not perform well and that its guarantees will be "in the money". **The insurance company underwrites the FIA with its strong guarantees**.

2: Regulation - What is Better?

More regulation is not necessarily better than less. Likewise, federal regulation is not necessarily better than state. If regulation is not working properly, steps should be taken to improve the current process. If the current process is broken, extreme measures may be justified. An extreme measure could include breaking a longstanding tradition of state authority in favor of federal authority. However, this extreme must be justified. Based on annuity complaint data, it is a huge stretch that extreme measures are called for.



This chart shows complaints per average policy size. The average size of an annuity contract is about $60,000. Total individual annuities are in blue while FIAs are in orange. Complaints for total individual annuities range from .04%-.07% of total policies issued. Complaints for FIAs range from .02%-.06% of total FIA contracts issued and have declined over the last year. **Complaints for total individual annuities account for less than one-tenth of 1%**, and FIA complaints are even less. While sales have not been perfect, complaints are not large and do not justify extreme regulatory changes. It seems that the current system works and improvements regarding state regulation should be considered.

3: Cost-Benefit Analysis
Proposed Rule 151A is quick to suggest federal action but slow to explain enhanced benefits offered through federal regulation.

"Disclosures that would be required for registered indexed annuities include information about costs (surrender charges); the method of computing indexed returns…; minimum guarantees…; and benefits (lump sum, as well as annuity and death benefits)." These disclosures are already required and provided under state law. How would federal disclosures be an improvement over current disclosures?

"Broker-dealer sales practice protections would apply to transactions." This relates to the *"registered representative's obligation to make only recommendations that are suitable."* The NAIC drafted a suitability regulation that has already been enacted by several states. How would the SEC's suitability regulation improve the NAIC's?

The proposed rule *"may enhance competition among insurance products and other financial products"* but also may create *"diminished competition…if some insurance companies cease issuing indexed annuities."* These conflicting statements seem to cancel each other out as an unknown effect. Even though competition is a clear SEC directive, it is clear that competition consequences have not been fully vetted.

The only guaranteed benefit I have found is the increased revenue broker dealers would receive from earning commission on every FIA sale. FIA sales for the second quarter of 2008 totaled $6.9 billion, with broker dealer sales representing 0.7% of this number (Advantage Compendium). If Proposed Rule 151A takes effect, broker dealers could earn additional revenue on the remaining 99.3% of FIA sales.

A few other questions that should be answered:
- How would the SEC's complaint resolution process be better than the state's?
- Why are registered representatives better suited to sell FIAs than licensed agents who meet continuing education requirements?
- Why are we considering this course of action when insured complaints are so low?

It is clear that added federal disclosures would be redundant. It is unclear what additional value would be provided through federal regulation. The stakes are just too high to take such extreme measures without providing significant improvements.

Conclusion
The misrepresentation of the insurance benefits provided by FIAs, the unclear benefit of more disclosure, and additional costs added by Rule 151A suggest that an extension of the comment period is justified or an abandonment of the proposal altogether is warranted.

Sincerely,

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