AXA EQUITABLE

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September 10, 2008

Ms. Florence E. Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: Indexed Annuities and Certain Other Insurance Contracts
File No. S7-14-08

Dear Ms. Harmon:

AXA Equitable Life Insurance Company ("AXA Equitable")[1] submits this letter in response to the request for comments by the Securities and Exchange Commission (the "SEC" or the "Commission") on proposed rule 151A under the Securities Act of 1933 (the "1933 Act") and proposed rule 12h-7 under the Securities Exchange Act of 1934 (the "1934 Act") included in Release Nos. 33-8933 and 34-58022 (June 25, 2008) (the "Proposing Release").[2]

We support the Commission's objective of requiring registration under the 1933 Act of indexed annuities, as well as the Commission's proposal to eliminate 1934 Act reporting triggered by registered insurance and annuity contracts.

Rule 151A

AXA Equitable supports the primary objective of proposed rule 151A, which is to require 1933 Act registration of annuity contracts with values and payments closely tied to the performance of an index. Although indexed annuities commonly provide guarantees related to principal and interest, the distinguishing attribute of equity indexed annuities is the possibility of additions to contract value based on the performance of a securities index, such as the S&P 500 index. That feature necessarily means that the purchaser of a contract accepts a significant

[1] AXA Equitable is part of AXA Group, a diversified insurance group, and is an operating subsidiary of AXA Financial, Inc., a U.S. financial services company. AXA Financial's principal operating subsidiaries, in addition to AXA Equitable, include other insurance companies (MONY Life Insurance Company and MONY Life Insurance Company of America) and distributors (AXA Advisors, LLC and AXA Distributors, LLC). AXA Financial is a leading issuer and distributor of variable and fixed life insurance and annuity contracts.

[2] Citations to the Proposing Release are to the version in the Federal Register, 73 Fed. Reg. 37752 (July 1, 2008).

uncertainty as to its future value. That investment risk, in our view, is significant enough for the Commission to determine reasonably that the public interest is served by requiring registration of those contracts so that investors are provided the protections of registration, including a prospectus. That element of equity market uncertainty in the investment decision, both at the point of purchase and ongoing in decisions to retain the contract, is incompatible with the insurance contract exemption in section 3(a)(8). This is the case even though the company may accept a significant exposure to market volatility that it manages through hedging or other risk management activities. The securities-linked features of the contract are necessarily a key part of the contract and thus are appropriately an important part of the marketing of the product, a fact that also supports registration.[3]

We note that the Proposing Release discusses the reasons for registration of equity indexed annuities, and therefore we do not repeat those reasons at length here.[4] We believe that the Commission's discussion of the relevant Supreme Court precedents in the context of equity indexed products is correct and appropriate.

Although we believe that equity indexed annuities should be required to be registered, we believe that proposed rule 151A is too broad as drafted. For example, because proposed rule 151A would cover contracts with values calculated in whole or in part with reference to the performance of a security or a group or index of securities, the proposed rule could conceivably cover traditional interest rate annuity contracts for which insurers periodically declare new excess interest rate guarantees (above the contractually guaranteed minimum) on a prospective basis; in doing so, insurers necessarily consider the expected future yield of their general account investments, or if the contract so provides, calculate a prospective rate guarantee by reference to specific fixed income securities (such as Treasury bonds) or indexes. Such contracts are not similar to the equity indexed annuities at the heart of the proposed rule and should not be swept

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[3] The SEC has stated that it believes, "as the relevant case law supports, that the manner is which a contract is primarily marketed is a significant factor which must be considered in determining a contract's status under the federal securities laws." Rel. No. 33-6645 at text accompanying nn.42-43 (May 29, 1986) (adopting rule 151).

[4] *See, e.g.,* Proposing Release at 37752 ("Individuals who purchase such indexed annuities assume many of the same risks and rewards that investors assume when investing their money in mutual funds, variable annuities, and other securities."); *id.* at 37758 ("There is a strong federal interest in providing investors with disclosures, antifraud, and sales practice protections when they are purchasing annuities that are likely to expose them to market volatility and risk."). *See also* Investment Company Institute ("ICI") comments on the 1997 concept release, File No. S7-22-97, letter from Craig S. Tyle, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, dated Dec. 30, 1997 ("Although [equity indexed products] generally guarantee a return of principal (less contract expenses and charges) plus some minimum level of interest, as required by state nonforfeiture laws, the economic lure of an [equity indexed product] is the potential for an investment return linked to the performance of an index of equity securities.").

into its coverage.[5] Because the SEC has proposed a rule that would require registration – rather than a safe harbor for certain contracts that do not require registration – we believe it is appropriate for the rule to be more limited in scope.

In addition, proposed rule 151A unnecessarily places too much reliance on discretionary determinations made by individual insurance companies. The proposed rule would apply to contracts where the amounts payable are more likely than not to exceed the amounts guaranteed under the contract, and that "more likely than not" determination is to be made by the issuing insurance company prior to issuance and at least every three years thereafter. The proposed rule would require that the methodology and the actuarial and other assumptions used in the determination be reasonable, and that the calculations be materially accurate, but no other more concrete requirements would apply. That standard would inevitably be implemented in different ways by different companies, thus leading to similar contracts being treated in different ways by different companies. We do not believe that such uncertainty and variation supports the Commission's objective of requiring registration of equity indexed annuity contracts.

We believe that the SEC can accomplish its primary objective – and more effectively target its approach – by adopting a more narrow rule. We recommend a rule that would require registration of any annuity contract if:

- Amounts payable by the issuer under the contract are calculated, in whole or in part, by contractual reference to the performance of a security, including a group or index of securities; and

- The amount payable is determined retroactively (i.e., determined by the actual performance of the security or group or index of securities, even if the formula is determined in advance).

The retroactive requirement would focus the rule on the type of contracts where a material element of investment risk has not been shifted from the contract owner to the company

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[5] We note that certain contracts that fall within the safe harbor of rule 151, and thus are currently not registered, could arguably be swept into the broad reach of rule 151A as proposed. An insurance company issuing an annuity contract with a guaranteed minimum interest rate plus discretionary interest set annually in advance could set that interest by reference to the performance of a specified security index and thus arguably be subject to registration under proposed rule 151A. The Commission specifically considered such contracts and determined that registration would not be required. In adopting rule 151, the Commission stated: "After reviewing the comments, the Commission has determined that it would be appropriate to extend the rule to permit insurers to make limited use of index features in determining the excess interest rate, so long as the excess rate is not modified more frequently than once per year. The insurer, therefore, would be permitted to specify an index to which it will refer, no more often than annually, to determine the excess rate that it will guarantee under the contract for the next 12-month or longer period." Rel. No. 33-6645 at text accompanying n.37 (May 29, 1986).

and would eliminate the "more likely than not" provision and its complications. It would also eliminate from the rule's reach contracts that set a particular interest rate in advance, even if the company considers the performance of a security to set that specific rate guaranteed for a specific period going forward. Those more traditional contracts shift significant investment risk to the insurance company without exposing investors to equity markets for potential returns; they do not have features similar to mutual funds or variable annuities (and therefore do not need to be marketed in a manner similar to mutual funds, variable annuities or other securities).[6]

Rule 12h-7

AXA Equitable supports the Commission's proposal to eliminate 1934 Act reporting triggered by the registration under the 1933 Act of insurance contracts, whether they be indexed annuities or other insurance contracts that have long been registered, such as fixed interested rate contracts with market value adjustment features ("MVA contracts"). AXA Equitable files 1934 Act reports because of the registration of its MVA contracts. Based on that experience, we believe that the 1934 Act reports do not provide any meaningful additional information to insurance contract purchasers or the public, especially in light of the extensive state regulation of insurance company financial condition noted in the Proposing Release.[7] We understand that industry groups will be commenting on certain technical aspects of the proposed rule, and we encourage the Commission to consider those comments so that the rule can be adopted in a form that meets its objective.

Conclusion

For the reasons set forth above, we support the Commission's objective of requiring registration under the 1933 Act of equity indexed annuities. We recommend, however, that the Commission narrow the rule so that it is more narrowly targeted to equity indexed annuities. We also support the Commission's proposal to eliminate 1934 Act reporting triggered by registered insurance and annuity contracts.

We appreciate the opportunity to comment on the Commission's efforts to address these important topics and the consideration that the Commission may give to the views expressed in this letter. If the Commission or the staff have any questions or wish to discuss this letter, please contact me at the above address.

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[6] The retroactivity requirement would eliminate from the reach of rule 151A the type of contract referred to in footnote 6 above which are not required to be registered under the existing safe harbor of rule 151.

[7] *See* Proposing Release at 37762-63.

Sincerely,

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