1801

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606-1285

TEL: (312) 407-0700
FAX: (312) 407-0411
www.skadden.com

DIRECT DIAL
(312) 407-0792
DIRECT FAX
(312) 407-0411
EMAIL ADDRESS
ERIC.GORMAN@SKADDEN.COM

September 10, 2008

Via E-Mail

Ms. Florence E. Harmon
Acting Secretary
United States Securities and Exchange
Commission
100 F Street, NE
Washington, DC 20549
rule-comments@sec.gov

Re: Comment Regarding Release Nos. 33-8,933 and 34-58,022, "Indexed Annuities and Certain other Insurance Contracts" (File No. S7-14-08)

Dear Ms. Harmon:

We are counsel to American Equity Investment Life Holding Company ("American Equity" or the "Company"). American Equity respectfully submits this comment on Securities and Exchange Commission ("SEC" or "Commission") Release Nos. 33-8,933 and 34-58,022, 73 Fed. Reg. 37,752 (July 1, 2008) (the "Release"), proposing that a rule relating to fixed indexed annuities ("FIAs") be codified as 17 C.F.R. § 231.151A ("Proposed Rule 151A"), and a related exemption be codified as 17 C.F.R. § 240.12h-7 (the "Proposed Exemption"). As described herein, Proposed Rule 151A is neither necessary nor prudent. We therefore urge the SEC not to issue Proposed Rule 151A as a final rule. In the alternative, we propose that the SEC rely on (or clarify) existing Rule 151, 17 C.F.R. § 230.151 (2008), to address any concerns that some FIAs are not true "annuity contracts," and, if any final version of Proposed Rule 151A is issued, that it include an exemption for those FIAs subject to an adequate level of state regulation. We would be pleased to work with the SEC on crafting any clarification or exemption.

American Equity, a leading annuity and life insurance company, is the third-largest provider of FIAs in the United States. The Company maintains its principal place of business in the symbol AEL. American Equity sells FIAs in 49 states and the District of Columbia. FIA sales accounted for approximately 98 percent of the Company's total annuity deposits collected in 2007, which totaled $2,144,682,000. American Equity currently enjoys a financial strength rating of "A-" (excellent) from the independent rating agency A.M. Best.

American Equity is at the forefront of insurance industry efforts to develop best practices for the sale of FIAs, which include ensuring that customers receive full and fair disclosures and are protected against abusive sales practices. American Equity is a member of the Insurance Marketplace Standards Association ("IMSA"), which is an independent, non-profit organization that sets high ethical standards for the sale of individual life insurance, annuity, and long-term care insurance. As a member of IMSA, American Equity is committed to maintaining high ethical standards and to being fair, honest, and open in the way it advertises, sells, and services its products.

American Equity's rigorous suitability determination process is an example of the industry's commitment to high ethical standards. As part of this process, American Equity manually verifies that an FIA is appropriate for each prospective customer seeking to purchase, replace, or exchange an FIA. American Equity will not sell FIAs to customers if the product is unsuitable for their needs, including, for example, prospective customers who would require large short-term withdrawals from the FIA. The Company follows this process in every state in which it operates, regardless of whether it is required under state law. The suitability determination process has yielded impressive results. In 2007, for example, American Equity rejected 490 prospective customers (representing approximately $84 million in premiums) who sought to purchase FIAs, but for whom the products were unsuitable.

Further, American Equity FIAs are transparent and purchasers do not incur undisclosed or inadequately explained fees. Unlike variable annuities, mutual funds, and managed accounts, customers do not pay commissions, sales loads, account maintenance fees, or other internal expenses. Although American Equity pays commissions to sales agents that average between seven and nine percent of a contract's premium, *none of the commission is deducted from customer account values*. Moreover, the Company provides full and fair disclosures regarding the applicability of the only fee that American Equity ever charges to FIA customers, which is a surrender charge that is incurred *only* if a customer elects to withdraw, in excess of certain levels, all or part of the annuity's value before the end of the surrender period.[1] The surrender charge is not intended to be, and does not constitute, a "windfall" to American Equity. Instead, the surrender charge reimburses American Equity for real expenses and losses that it incurs as a result of a customer's early withdrawal or termination. Without surrender charges American Equity could not invest in the fixed maturity securities that state insurance laws mandate to

[1] Beginning in year two of the contract, American Equity permits policyholders to make annual withdrawals of up to 10 percent of the annuity's value without incurring a surrender charge. Greater penalty-free withdrawals are available under certain other circumstances that are addressed in riders to certain FIAs, such as confinement to a nursing home or diagnosis of a terminal illness. Additionally, all surrender charges are waived at death, permitting the beneficiary to access the contract's full value.

ensure solvency (with the ultimate goal of protecting the security of all customers' contractual values) and that allow the Company to provide customers with the guarantees and other insurance benefits of the contract.

Although American Equity voluntarily employs rigorous processes to ensure that its customers are protected against sales practice abuses and that its FIAs are appropriate for purchasers, state regulation also imposes extensive consumer protection requirements on the Company. These state laws comprehensively regulate the sale and marketing of FIAs and require, for example, that insurers that sell FIAs disclose to prospective customers pertinent information about the FIA, maintain adequate supervisory systems to ensure that agents comply with state sales practice protection laws, and that, as part of the requisite product approval process, state insurance regulators review insurers' sales materials prior to distribution to prospective customers. States employ a variety of means to actively monitor and enforce compliance with these laws, including requiring that insurers regularly undergo market conduct examinations (in addition to financial solvency reviews), which are state insurance commissioner inquiries into insurers' operations, and include review of product design and marketing, advertising, licensing, complaint handling, policyholder services, and claims practices. In the last four years, American Equity has participated in six such reviews, including in Florida and California, the states with the highest annuity sales during 2007.

FIAs like those that American Equity offers are valuable to a diverse set of persons with a broad range of financial objectives. Many consumers purchase FIAs for the safety of premium and the potential to earn a better return than other safe money alternatives, such as traditional fixed rate annuities, certificates of deposit, or money market funds.[2] Some consumers purchase FIAs primarily for other insurance features of the product, such as a guaranteed income stream for life, tax deferral benefits (*i.e.*, income earned in an annuity contract accumulates tax-free until it is distributed to the owner or the owner's beneficiary), and avoidance of probate (*i.e.*, the purchaser's beneficiaries can receive the value of the annuity without the expense, delay, and publicity of probate).[3] The broad appeal of FIAs to customers with different financial goals is evident from the average age of purchasers. As of June 30, 2008, using a weighted average based upon annuity contract values, approximately 25 percent of American Equity FIAs were owned by persons 59 years of age or under, 66 percent were owned by persons between the ages of 60 and 79, and nine percent were owned by persons aged 80 or older. *See* Appendix B.

The Company's high ethical standards and the well-recognized value of American Equity FIAs to customers' financial portfolios and estate strategies are primary reasons that American Equity receives few consumer complaints—the complaint ratio for American Equity FIAs has

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2 American Equity FIAs offer customers the same insurance guarantees as traditional fixed rate annuities, including a fixed return that does not risk the purchaser's principal. The only material difference between the two products is that an FIA permits the customer's credited interest rate to be higher than the minimum guaranteed interest rate through reference to a linked index. *See* Appendix A.

3 Thus, for example, it is not unusual for a consumer to purchase an FIA with a contract term beyond his own life expectancy for the purpose of accumulating funds tax-free to leave to his beneficiaries upon his death.

been *less than 0.2%* by policyholder count in each of the last five years. These also are reasons that the Company is in a unique position to dispel the many misconceptions about FIAs expressed in the Release, and to describe why Proposed Rule 151A is unnecessary, contrary to established law, and would not serve the public interest. In this comment, American Equity first will explain that Proposed Rule 151A cannot subject American Equity FIAs to the federal securities laws. The comment then explains that additional regulation of FIAs is unnecessary because there is no evidence of widespread complaints about FIA sales practices and because states already adequately regulate the sale of FIAs. Finally, the comment will address the substantial negative effects that Proposed Rule 151A would have on the insurance industry and consumers.[4]

Summary of Comment

American Equity FIAs satisfy the requirements that the Supreme Court has set forth for an annuity to be exempt from the federal securities laws under Section 3(a)(8) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(8) (the "Securities Act"), which exempts "annuity contracts" from treatment as securities. *See SEC v. Variable Annuity Life Ins. Co. ("VALIC")*, 359 U.S. 65 (1959); *SEC v. United Benefit Life Ins. Co.*, 387 U.S. 202 (1967). It is of paramount significance that a federal district court, applying this Supreme Court precedent, already has held that an *American Equity FIA* is an *annuity contract* that is *statutorily exempt* from the securities laws under Section 3(a)(8). *See Malone v. Addison Ins. Mktg., Inc.*, 225 F. Supp. 2d 743 (W.D. Ky. 2002). Given that American Equity FIAs are "annuity contracts" under Section 3(a)(8), and that the SEC may not extend the securities laws beyond congressional limitations, American Equity FIAs *are* exempt from the federal securities laws regardless of whether they are covered under the "perilous harbor" of Proposed Rule 151A.[5] For that reason, and because the "perilous harbor" misapplies the relevant Supreme Court precedent, the core precept of the Release—that Proposed Rule 151A can redefine FIAs as securities—is fundamentally flawed.

Further, Proposed Rule 151A is premised on an unfounded concern that FIAs require additional oversight. Although the Release asserts that there is widespread abuse in the sales and

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[4] Although American Equity believes that this comment demonstrates compelling reasons why Proposed Rule 151A should not be adopted as a final rule, the refusal of the SEC to extend the extremely short comment period has prevented many other interested parties from adequately responding to Proposed Rule 151A. In addition to the request for an extension of time that American Equity filed with the SEC on August 5, 2008, a significant number of important entities, groups, and individuals filed similar requests, including members of Congress, the National Governors Association, state insurance regulators, and industry organizations. The 77 day comment period was plainly insufficient for all of these parties to adequately respond to the Release (which poses over 100 questions for comment), and to consult with each other, as well as the Commission, Staff, and others, regarding how the rule would affect consumers, insurers, agents, state regulators, and the insurance industry as a whole. The need for such an extension was particularly acute given that the SEC to our knowledge did not consult with state insurance regulators or industry representatives at all prior to issuing the Release.

[5] To distinguish Proposed Rule 151A from the safe harbor of Rule 151, 17 C.F.R. § 230.151 (2008), some commentators have aptly dubbed the two-part test of Proposed Rule 151A, which purports to subject to the securities laws those FIAs that satisfy its requirements, as a "perilous harbor."

marketing of FIAs, the evidence of such abuse is for the most part isolated and anecdotal. The Release does not substantiate its assertion of widespread abuse with any comprehensive study, data, or quantitative analysis. More significantly, data from the National Association of Insurance Commissioners ("NAIC"), an association of the insurance commissioners from the 50 states, the District of Columbia, and certain territories, which is dedicated to assisting state insurance regulators serve the public interest and achieve fundamental insurance regulatory goals, soundly refutes the notion that there are pervasive consumer complaints about FIA sales practices.

It is not surprising that there are few complaints about FIA sales practices, because *states actively and effectively regulate the sale of these products*. The Release fails to acknowledge that, among the panoply of state regulations applicable to FIAs, state regulatory requirements provide consumers with ample protections against abusive sales practices and ensure that customers receive adequate disclosures. The federal securities laws would not meaningfully enhance consumer protections.

Given the evidence that there are few consumer complaints about FIAs, as well as the extensive regulation already in place, the benefits of Proposed Rule 151A are low. The costs of Proposed Rule 151A, however, are high. For example, the Release recognizes that Proposed Rule 151A would lead the insurance industry and consumers to bear some or all of six categories of significant costs. 73 Fed. Reg. at 37,769-70. Although these categories of costs are substantial, they are not exhaustive of the burdens on insurers and the public that would result from Proposed Rule 151A. Proposed Rule 151A also is likely to undermine many insurance companies' distribution networks, marginalize traditional insurance agents, and lead to the proliferation of products that, to the confusion of consumers, do not provide the core insurance characteristics of the FIA. In addition, the complexity of the analysis required under Proposed Rule 151A would cause insurers great uncertainty regarding the status of their FIAs, *i.e.*, whether they are securities, which would lead to certain specific and significant litigation risks.

Comment

I. Proposed Rule 151A cannot subject American Equity FIAs to the federal securities laws because they are exempted under Section 3(a)(8).

A. The only court ruling on point squarely holds that an American Equity FIA is not a security, and that it also qualifies for the safe harbor of Rule 151.

One federal court already has determined that an American Equity FIA is exempt from the federal securities laws under Section 3(a)(8). *Malone*, 225 F. Supp. 2d at 751.[6] The *Malone* court held that the American Equity FIA is an "annuity contract" pursuant to Section 3(a)(8) after analyzing the FIA under *VALIC*, 359 U.S. 65, and *United Benefit*, 387 U.S. 202. In those decisions, the Supreme Court set forth the framework for determining whether a product that is labeled as an annuity truly is an "annuity contract" under Section 3(a)(8), and thus statutorily exempt from the federal securities laws.[7]

The *Malone* court explained that the risk-bearing characteristics of an annuity are central to the analysis of whether the Section 3(a)(8) exemption is applicable. *Malone*, 225 F. Supp. 2d at 749. An annuity is not an "annuity contract" under Section 3(a)(8) if it provides payments to the purchaser that vary with the performance of the insurer's investments but does not provide "'a guarantee that at least some fraction of the benefits will be payable in fixed amounts.'" *Id.* (quoting *VALIC*, 359 U.S. at 72). The insurer in that instance assumes no risk in the insurance sense (and the purchaser assumes all risk) because the annuity provides no guarantee of return of principal or fixed income. *Malone*, 225 F. Supp. 2d at 749 (citing *VALIC*, 359 U.S. at 70; *United Benefit*, 387 U.S. at 208). Likewise, the accumulation phase of the annuity can be treated as a security if, at the end of the contract period, an investor is guaranteed no more than the return of his or her initial investment if the shared investment was unprofitable. *Id.* (citing *United Benefit*, 387 U.S. at 208). In that instance, the insurer does not assume a sufficient level of risk for the annuity to be considered an insurance product. *Id.* A fixed annuity, on the other hand, is an "annuity contract" because "'the policyholder has no direct interest in [an investment] fund and the insurer has a dollar target to meet,'" *id.* at 750 (quoting *United Benefit*, 387 U.S. at 208), which means that a sufficient level of risk shifts from the purchaser to the insurer.

Pursuant to the analysis that *VALIC* and *United Benefit* require, the *Malone* court provided three reasons for its holding that the American Equity FIA is an "annuity contract"

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6 The Release acknowledges the *Malone* decision only in a footnote, and even then only recognizes the court's secondary holding, that the FIA at issue met the conditions of the safe harbor of Rule 151, 17 C.F.R. § 230.151. 73 Fed. Reg. at 37,756 n.38. The Release does not acknowledge the court's primary holding, that the FIA at issue is an "annuity contract" under Section 3(a)(8). *Id.*

7 Section 3(a)(8) expressly exempts from treatment as a security "[a]ny insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia." 15 U.S.C. § 77c(a)(8).

under Section 3(a)(8). 225 F. Supp. 2d at 750-51. *First*, the American Equity FIA guarantees the purchaser an annual minimum return regardless of the performance of the relevant index. *Id.* American Equity therefore bears the investment risk of the contract because American Equity must provide a fixed return "regardless of how poorly the market perform[s]." *Id. Second*, the purchaser's return on principal is "not directly dependent on the performance" of the relevant index and is not maintained in a separate account similar to a variable annuity. *Id.* at 750-51. *Third*, American Equity bears "as much or more of the risk" than the purchaser because American Equity's return on its investment of the purchaser's premium may not equal or exceed the return that American Equity is obligated to provide to the purchaser, *i.e.*, credited interest from reference to the index or guaranteed minimum return. *Id.* at 751. The purchaser is exposed only to the possibility of index volatility, which is not a "risk" relevant to determining whether an annuity is a security because the purchaser's initial premium cannot be lost. *Id.* Index volatility merely involves the uncertainty that the purchaser in hindsight could have chosen a contract that would have provided a higher return. *Id.* For these three reasons, the court concluded that the FIA much more closely resembles a fixed annuity than a security, and is an "annuity contract" under Section 3(a)(8). *Id.*[8]

American Equity FIAs exhibit the characteristics necessary to qualify as "annuity contracts" within the meaning of Section 3(a)(8) and thus are entitled to statutory exemption from the federal securities laws. *See Malone*, 225 F. Supp. 2d at 751. It therefore is inconsequential whether American Equity FIAs are covered under the "perilous harbor" of Proposed Rule 151A because the SEC may not extend the securities laws beyond congressional limitations. *See, e.g., Fin. Planning Ass'n v. SEC*, 482 F.3d 481, 493 (D.C. Cir. 2007) (citing cases) (vacating SEC rule because the SEC's rulemaking powers are "'limited to adopting regulations to carry into effect the will of Congress as expressed in the statute'" (citations omitted)); *Am. Library Ass'n v. FCC*, 406 F.3d 689, 708 (D.C. Cir. 2005) (vacating FCC rule because it exceeded the scope of the authority delegated to the agency by Congress; citing *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986) ("[A]n agency literally has no power to act . . . unless and until Congress confers power upon it. . . . To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. This we are both unwilling and unable to do.")). Moreover, the reason that the "perilous harbor" of Proposed Rule 151A bears no relevance to determining whether an FIA may be treated as a security is that the rule reflects a misunderstanding of the type of risk important to whether an annuity is an "annuity contract" within the meaning of Section 3(a)(8).

The Supreme Court has explained that Section 3(a)(8) exempts from the definition of a security those annuities that allocate to the insurer a certain level of the contract's investment

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8 As an alternative ground for its holding that the FIA at issue was not a security under Section 3(a)(8), the court held that the FIA at issue met all three prongs of the safe harbor of Rule 151, 17 C.F.R. § 230.151 (2008). *Malone*, 225 F. Supp. 2d at 751-52. The safe harbor of Rule 151 provides that an annuity that meets its three-prong test "shall be deemed to be within the provisions of Section 3(a)(8)" and thus exempt from the securities laws.

risk. *See VALIC*, 359 U.S. at 71; *United Benefit*, 387 U.S. at 208. Proposed Rule 151A, however, incorporates a fundamentally flawed concept of risk. The "perilous harbor" of Proposed Rule 151A is based on the notion that purchasers of FIAs "are exposed to a significant investment risk—*i.e.*, the volatility of the underlying securities index." 73 Fed. Reg. 37,752. According to the Release, when purchasers' returns vary based on index-volatility, "the majority of the investment risk for the fluctuating, equity-linked portion of the return is borne by the individual purchaser, not the insurer," and therefore the purchaser assumes too much investment risk for the contract to be an "annuity contract." *Id.* at 37,752, 57-59. The Release concludes that when the "amounts payable by an issuer under an [FIA] are more likely than not to exceed the amounts guaranteed under the contract," the purchaser bears this index-volatility risk (and consequently, a disproportionate share of the investment risk) and thus the FIA is a security. *Id.* The Release's novel concept of risk is contrary to both common sense and established law.[9]

The "risk" to the FIA purchaser that his or her returns will vary based on fluctuations of an index does not represent a true investment risk. Because the purchaser's principal is guaranteed not to decline and the purchaser is guaranteed to receive a certain return on his or her investment, the index-volatility "risk" to the purchaser simply represents uncertainty as to the precise level of return that the purchaser will receive. In other words, the purchaser's only "risk" is the opportunity-cost of selecting a different investment that later may prove to provide a higher return. The *Malone* court squarely rejected the definition of risk upon which Proposed Rule 151A is based. *Malone*, 225 F. Supp. at 751 ("Plaintiff's risk was not that she would lose the value of her initial investment, but rather the risk that had she chosen a different contract her money might have been worth more . . . . That type of risk . . . is not the type of risk central to determining whether a security exists."). The Release's concept of risk also is contrary to traditional understanding of investment risk. In common parlance, investment risk is limited to the possibility of loss of principal. *See, e.g.*, Webster's Eleventh New Collegiate Dictionary (2004) (defining risk as the "possibility of loss or injury").

When American Equity FIAs are examined using commonly accepted and traditional definitions of risk, it is apparent that they are "annuity contracts" under Section 3(a)(8), as the *Malone* court held. *See Malone*, 225 F. Supp. 2d at 751. In fact, American Equity FIAs greatly exceed the risk requirements of *VALIC* and *United Benefit* because American Equity *predominantly* bears the risks inherent in FIA contracts. *VALIC*, 359 U.S. at 71 ("For in common understanding 'insurance' involves a guarantee that at least some fraction of the benefits will be payable in fixed amounts.").

B. American Equity FIAs provide purchasers with guaranteed returns.

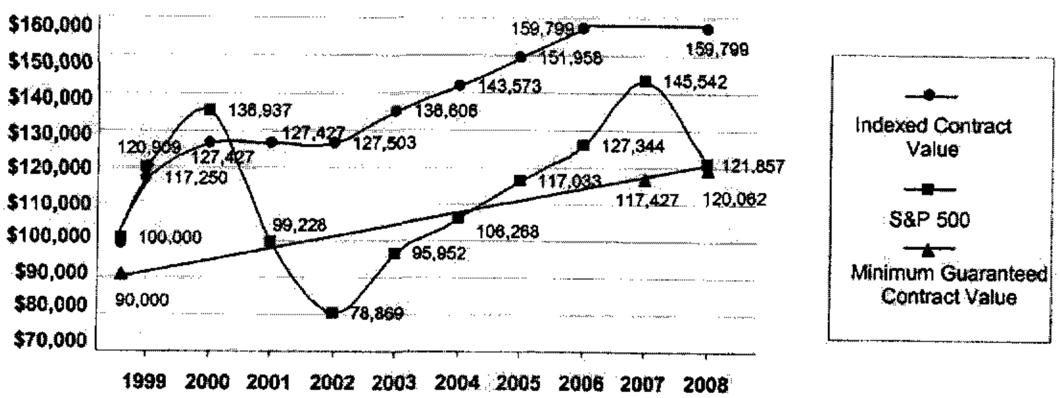
The purchaser of an American Equity FIA receives the higher of the value calculated from a minimum guaranteed interest rate (the "MGIR")[10] or the value from interest, compounded

[9] The Release provides no authority supporting this definition of risk.

[10] Every state has adopted the NAIC Model Standard Nonforfeiture Law or a similar regulation that specifies certain minimum cash surrender values for FIAs, including the minimum interest rate that can be applied as the *(cont'd)*

annually, at a rate calculated with reference to the appreciation of a particular equity or fixed income index.[11] The annuity's value is exposed to absolutely no risk of loss to principal due to index volatility because the credited interest rate never can be negative, regardless of whether the referenced index declines in value. Further, credited interest based on appreciation of the referenced index is "locked-in" each year because the measuring point of the referenced index is "reset" on each contract anniversary, and that "reset" level becomes the benchmark against which appreciation over the next year is measured.[12] In other words, a customer's principal and interest credited since the most recent contract anniversary never are risked by future fluctuations in an index.

The chart below illustrates over an almost ten-year time period the account values of an American Equity FIA for a customer that made a $100,000 premium payment, as compared against the performance of the S&P 500 index over that same period.[13]



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MGIR. *See* Kenneth Black, Jr. & Harold D. Skipper, Jr., *Life & Health Insurance* 757-58 (13th ed.) (2000). Further, at the three percent MGIR currently applicable to the minimum surrender value of most American Equity FIAs, American Equity's Income Gold FIA, for example, guarantees the purchaser that the minimum value of the contract will be no less than 118 percent of the value of the initial premium after ten years, regardless of whether the indexed return is lower.

11 The customer annually selects, for the following year, whether this interest crediting component will be calculated using a current fixed value rate that does not reference any index, or through reference to one of three separate indices: the S&P 500, Dow Jones Industrial Average, or the Lehman Brothers U.S. Aggregate Index.

12 For example, if the customer selects the S&P 500 as the interest crediting reference for his or her FIA in year one, and the index appreciates eight percent in that year, the customer's FIA will be credited with interest based on that appreciation. If the customer also selects the S&P 500 index as the index crediting reference in year two, and the S&P 500 declines eight percent in that year, the contract simply will be credited with zero index appreciation for year two (although the purchaser still is guaranteed the MGIR over the life of the contract). The appreciation from year one would be unaffected.

13 The chart is based on actual credited rates from September 30, 1998, through July 17, 2008, for American Equity's Index-1 product, utilizing the S&P 500 annual monthly average crediting strategy over the life of the contract.

C. The interest credited to an American Equity FIA is unrelated to the performance of American Equity's investments.

The interest that the purchaser of an American Equity FIA receives is unrelated to the actual investment experience of the premium payments that a customer makes to American Equity. Unlike variable annuities, the purchaser maintains absolutely no ownership interest in an index; the index is used solely as an objective external reference point for the interest rate that is credited to the purchaser. Instead, as with traditional fixed rate annuities, when a customer purchases an FIA, that customer's premium is combined in American Equity's general account with those of other customers. American Equity's general account is invested primarily in fixed maturity securities, which comport with state solvency laws.[14] The investments in fixed maturity securities enable American Equity to utilize actuarial calculations and guarantee the returns and other benefits that FIAs and the Company's other insurance products offer. The table below indicates that, as of June 30, 2008, 81.5 percent of American Equity's invested assets consisted of fixed maturity securities (including mortgage loans, 98.3 percent of the invested assets are invested in fixed income assets).[15]

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14 An important aim of state insurance laws is to ensure the solvency of insurance companies. *See, e.g.*, Black & Skipper, *supra* n. 10, 949; Robert E. Keeton & Alan I. Widiss, *Insurance Law* 938-939 (1988), *see also* 73 Fed. Reg. at 37,756. These solvency laws, which are in effect in all 50 states and the District of Columbia, are one of the unique features of insurance products because they are designed to help ensure that insurance companies are financially capable of meeting their obligations to their insureds. *See* Black & Skipper, *supra* n. 10, 949; Keaton & Wildiss, at 939. These laws generally accomplish their goal by imposing limitations on the size of the risk that insurance companies may accept, establishing requirements for reserve liabilities and/or minimum capital and surplus, stipulating permissible investments and their proper valuation, and requiring corresponding financial reporting to the state insurance regulator. Black & Skipper, *supra* n. 10, 949, 55. State insurance regulators are empowered with a variety of means to enforce these laws and are required to conduct periodic on-site examinations of domestic insurers. *Id.* at 955-60. States also directly intervene in the affairs of an insurance company if its solvency is in jeopardy. *Id.* at 962. Similarly, every state has some form of insolvency guaranty law, which generally establishes a fund to indemnify losses suffered by policyholders of insolvent insurers. *Id.* at 962.

15 Source: American Equity Investment Life Holding Company, Current Report (Form 8-K) at 12 (July 31, 2008).

	Carrying Amount (Dollars in thousands)	Percent
Fixed maturity securities:		
United States Government full faith and credit	20,262	0.2
United States Government sponsored agencies	7,536,663	57.2
Corporate securities, including redeemable preferred stocks	1,521,857	11.5
Mortgage and asset-backed securities:		
Government	73,683	0.6
Non-Government	1,574,006	12.0
Total fixed maturity securities	10,726,471	81.5
Equity securities	152,549	1.2
Mortgage loans on real estate	2,213,548	16.8
Derivative instruments	74,068	0.5
Policy loans	422	–
	13,167,058	100.0

Further, as of June 30, 2008, the credit quality of 99.9 percent of the fixed maturity securities was investment grade, and those securities primarily were rated Aaa, Aa, or A:[16]

NAIC Designation	Rating Agency Equivalent	Carrying Amount (Dollars in thousands)	Percent
1	Aaa/Aa/A	9,590,538	89.4
2	Baa	1,036,540	9.7
3	Ba	60,778	0.6
4	B	24,387	0.2
5	Caa and lower	14,228	0.1
6	In or near default	–	–
		10,726,471	100.0

American Equity manages the index-based interest component of FIAs by purchasing call options on the applicable indices and by prospectively adjusting annuity components to the crediting methods on policy anniversary dates to reflect the change in the cost of such options (which varies based on market conditions).

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[16] Source: *Id.* at 13.

D. American Equity bears substantial risk in connection with FIA contracts because the assets underlying the Company's general account may not provide sufficient income to fund contract values.

American Equity bears the substantial risk that the investment performance of the Company's general account will trail the performance necessary to meet its guarantees to customers, which include return of principal, and interest credited from reference to the appreciation of a referenced index (which American Equity is not actually invested in) or the MGIR. The investment risks to American Equity's general account are significant, and include:

(1) interest rate fluctuations, which may cause American Equity to realize returns from its investments that are lower than those necessary to meet obligations to customers;
(2) that counter-parties to long-term investments will default on principal and interest payments, particularly if a major downturn in economic activity occurs, and thus American Equity will lose the value of, or not receive a return on, its investment;
(3) that counter-parties to derivative instruments used to fund the index-based interest component of FIAs will default, and thus American Equity will lose a substantial source of income used to fund index-based interest due to policyholders;
(4) that the cost of derivative instruments may exceed the return realized because it may not be possible to make sufficient adjustments to components of crediting methods in all economic and market environments (especially if competition and other factors limit the ability to adjust these features of the contract), and thus the return from the derivative instruments will be lower than required to fund the index-based interest due to policyholders; and
(5) unexpected increases in early terminations and withdrawals will cause the Company to incur losses on its long-term investments or render these long-term investments an inadequate source of income to meet obligations to policyholders.

Source: American Equity Investment Life Holding Company, Annual Report (Form 10-K), at 6, 14, 15 (March 14, 2008).

These risks often materialize, which causes the value of the general account to fluctuate and for American Equity regularly to realize losses on individual assets. *See id.* at F-22-F-24 (note 3 to audited consolidated financial statements). None of these losses, however, are passed on to consumers. Therefore, with respect to a particular FIA contract, American Equity bears the risk that the assets underlying the Company's general account may decline or underperform the appreciation of the referenced index or the MGIR, which are the returns due to the customer.

E. The purchaser of an American Equity FIA contract bears little risk because he or she is guaranteed a return on principal.

The purchaser of the FIA assumes no risk that the value of his or her principal or accumulated value will decline. Unlike variable annuities, FIAs do not pass through to the purchaser the investment performance of American Equity's pool of assets, and therefore the purchaser does not risk losing principal. The only risk that the purchaser assumes is that American Equity may become insolvent and cannot meet its contractual obligations. This is not the sort of investment risk that the Courts in *VALIC* and *United Benefit* found to be indicative of a security because this is a risk inherent in all insurance products. *See VALIC*, 359 U.S. at 73 (noting that the contract at issue was not an "annuity contract" because there was "no true underwriting of risks, the one earmark of insurance as it has commonly been conceived of in popular understanding and usage."). This type of risk, moreover, underscores that American Equity FIAs are insurance products because the purchaser depends on state solvency regulations to ensure that American Equity's investments will generate the returns necessary to meet the Company's contractual obligations.[17]

Given the imbalance of the risks between American Equity and the purchaser, it is apparent that American Equity *predominantly* bears the risk of an FIA contract. This is more than adequate to satisfy the risk-based tests of *VALIC* and *United Benefit*.

F. American Equity FIAs appeal to consumers based on their stability and security.

This distribution of risk, in particular the purchaser's reliance on American Equity to provide guaranteed returns no matter how American Equity's general account investments perform, also demonstrates that American Equity FIAs "appeal to the purchaser . . . on the usual insurance basis of stability and security" rather than the "'prospect of 'growth' through sound investment management." *United Benefit*, 387 U.S. at 211; *see also id.* at 208 (holding that an annuity is not a true insurance product where "instead of promising to the policyholder an accumulation to a fixed amount of savings at interest, the insurer promises to serve as an investment agency and allow the policyholder to share in its investment experience").

Moreover, it is powerful evidence that FIAs appeal to consumers "on the usual insurance basis of stability and security" that American Equity markets FIAs primarily on the basis of their insurance features. Indeed, American Equity's marketing materials emphasize that FIAs provide the safety and stability of traditional fixed-rate annuities:

- "[FIAs] by their very nature are considered a safe money alternative. It is a contract between you and the insurance company for guaranteed interest and income options. American Equity insures this safety by investing your premium dollars in a diversity of investments that are closely regulated by insurance departments. These long-term investments ensure the stability of the company and help to provide you with a competitive yield."

- "When purchasing an [FIA], you own an annuity contract backed by American Equity Investment Life Insurance Company, you are not purchasing shares of stock or

[17] The Release acknowledges that, under *VALIC* and *United Benefit*, an annuity is more likely to be an "annuity contract" if state solvency laws sufficiently protect the purchaser's investment. 73 Fed. Reg. at 37,756 (noting, in the context of investment risk, that "[w]here an investor's investment in an annuity is sufficiently protected by the insurer, state insurance law regulation of insurer solvency and the adequacy of reserves are relevant. Where the investor's investment is not sufficiently protected, the disclosure protections of the Securities Act assume importance.").

indexes."

- "A very important benefit is that your premium and credited interest can never be lost due to index volatility."

- FIAs "are fixed annuities that provide an opportunity to potentially earn more interest than traditional fixed annuities and other safe money alternatives."

See, e.g., "American Equity's Gold Standard for a Secure Retirement Bonus Gold," Index-1-07 at 2.

II. Federal regulation of FIAs is unnecessary.

The contention in the Release that additional regulation of FIAs is necessary is unsupported. As an initial matter, the Release substantially overstates the level of consumer complaints about the sale and marketing of FIAs. All available evidence indicates that such complaints are only isolated and sporadic. Moreover, the states already adequately and effectively regulate the sale of FIAs, providing FIA consumers with the same disclosure benefits and substantive protections against sales practice abuses that the federal securities laws are designed to provide.

A. The Release offers no competent evidence of widespread complaints about FIA sales practices.

The Release fails to substantiate its assertions that there has been a "growth in complaints of abusive sales practices" regarding FIAs and that such complaints are common. 73 Fed. Reg. at 37,753, 54-55. Instead of providing comprehensive quantitative analyses or other data that detail the volume of these complaints, the Release relies only on anecdotal evidence from the North American Securities Administrators Association ("NASAA") and the Financial Industry Regulatory Authority ("FINRA"). Even this anecdotal evidence is quite sparse because the Release cites to only *four* such sources, none of which is relevant. For example, the Release places great emphasis on a NASAA contention that FIAs are "among the most pervasive products involved in senior investment fraud." *Id.* at 37,775. NASAA, however, has informed American Equity representatives that it maintains no records of complaints regarding such alleged "fraud."

Moreover, there apparently never was support for NASAA's assertion that FIAs are "among the most pervasive products involved in senior investment fraud," a claim which originally was made in a statement of its president, Patricia Struck, at the seniors summit of the SEC, on July 17, 2006. In that statement, Ms. Struck's "evidence" for this sweeping claim is merely that, with respect to senior investment fraud cases, those "involving variable or equity-indexed annuities were 65 percent of the caseload in Massachusetts, 60 percent of the caseload in Hawaii and Mississippi." Statement at July 17, 2006, SEC Seniors Summit, *available at* http://www.nasaa.org/Issues_Answers/Legislative_Activity/Testimony/4999.cfm. No reasonable inference can be drawn as to how many of these cases involved FIAs, as opposed to variable annuities (which already are subject to federal regulation), or even whether there were appreciable levels of total complaints. In fact, this statement is just as likely to support the opposite conclusion: that it is *variable* annuities that comprise the majority of complaints in the three states. Of course, variable annuities are already federally-regulated as securities, so the fact that they are part of NASAA's concern about senior investment fraud at all speaks volumes about the effectiveness of that federal regulation. If anything, the NASAA statement *undercuts* the premise of the Release.

The Release also refers to a report entitled "Protecting Senior Investors: Report of Examinations of *Securities Firms* Providing 'Free Lunch' Sales Seminars." *Id.* at 37,752 n.26 (emphasis added). The principal reason that this report is inapposite is because it mentions FIAs only three times as part of a list of many products discussed at "free lunch" seminars, but does not provide evidence of frequent sales practice abuses involving *FIAs.*[18] In addition, it is evident from its title alone that this report does not substantiate concerns that independent insurance agents who are not associated with broker-dealer networks engage in abusive sales practices with respect to FIAs. If anything, this report demonstrates that the federal securities laws do not effectively regulate the sales practices of *securities firms*.

The final two sources cited in the Release are merely notices from FINRA[19] to its members that express the organization's concern about the complexity of the features of FIAs and marketing materials used to explain those features. *Id.* at 37,755 n.23. But the FINRA notices do not detail any actual complaints about these marketing materials or the FIA products. *Id.*[20] In addition, the Dateline NBC segment that was played at the Commission's open meeting

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[18] The one specific reference to a fraud that occurred in connection with an FIA actually was a case of theft and did not relate to the complexity of FIAs or alleged misrepresentations. The report describes one instance of an investment advisor that misled several customers into signing blank authorization forms that purported to permit the advisor to obtain additional financial information about the customers. The investment advisor then forged these customers' names on documents, liquidated their existing portfolios, and invested their funds into FIAs. *See* Office of Compliance Inspections and Examinations, SEC, Protecting Senior Investors: Report of Examinations of Securities Firms Providing 'Free Lunch' Sales Seminars, at 25-26, *available at*, http://www.sec.gov/spotlight/seniors/freelunchreport.pdf.

[19] One notice is from the National Association of Securities Dealers ("NASD") to its members. NASD is one of FINRA's predecessor organizations.

[20] These notices moreover communicate materially inaccurate information about FIAs and betray a fundamental lack of understanding about their basic features. According to the FINRA notices, a purchaser of an FIA can lose money if the linked index does not appreciate in value. *See* FINRA, *Equity-Indexed Annuities—A Complex Choice* (updated Apr. 22, 2008), *available at* http://www.finra.org/InvestorInformation/InvestorAlerts/Annuities and Insurance/Equity-IndexedAnnuities-AComplexChoice/index.htm; ("Is it possible to lose money in an EIA? Yes. . . . [I]f you don't receive any index-linked interest, you could lose money on your investment"). This is entirely incorrect because the FIA guarantees the purchaser a minimum return on principal regardless of the performance of the index. Similarly, one notice expressed concern about claims in marketing materials such as:

> If you're looking for upside potential and no market downside look no further than [name of FIA].
> This fixed annuity . . . enables you to make the most of S&P 500 gains . . .

(cont'd)

on Proposed Rule 151A, and that often is mentioned as exposing allegedly pervasive unscrupulous FIA sales practices, featured only *one* actual customer. Webcast of June 25, 2008, SEC meeting *available at* http://www.connectlive.com/events/secopenmeetings/ at 1:12:19-1:14:46.

Further, in response to a FOIA request for documents that were considered in connection with the issuance of Proposed Rule 151A, the SEC produced fewer than 2000 pages of documents, none of which contains comprehensive data regarding complaints about FIA sales practices or otherwise substantiates the Release's contention that complaints about FIA sales are frequent.[21] Notably, the production contained a letter from Karen Tyler, president of the NASAA, to Chairman Christopher Cox, dated February 22, 2008 ("Tyler Letter"), that appears to form the basis for many of the assertions in the Release. Given that the letter is rife with factual inaccuracies and incorrect legal standards, it is not surprising that both Proposed Rule 151A and the Release are substantially flawed.[22] For example, the letter presents no credible evidence that

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What if the market goes down and you would lose nothing? The market goes up—you gain!

NASD, Notice to Members 05-50, Equity-Indexed Annuities: Member Responsibilities for Supervisory Sales of Unregistered Equity-Indexed Annuities *available at:* http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p014821.pdf, at 2 (August 2005). There is nothing misleading about these statements. Further, the notice does not include complete copies of the marketing materials in which these claims were located, and thus it is not possible to evaluate the statements in their context.

21 As a direct result of the short comment period provided for Proposed Rule 151A, American Equity did not receive these materials until September 3, 2008, *only seven days before the end of the comment period*. The transmittal letter accompanying these materials also indicated that the SEC withheld certain responsive materials from the production, some of which may be provided at an unspecified future date after confidentiality issues are resolved, and that the SEC is asserting certain privileges as to others. American Equity thereafter requested that the SEC provide or otherwise identify the documents withheld and, given the expiration of the comment period on September 10, 2008, emphasized the urgency of the request. On September 10, 2008, the SEC responded to this request in a one-page letter that stated that the SEC had not yet resolved the necessary confidentiality issues. Further, instead of identifying any of the documents withheld, the letter merely referred American Equity to an appeals process. The fact that these FOIA issues cannot be resolved prior to the deadline for submission of comments demonstrates that the comment period was entirely too short, and in turn, the overall deficiency of the notice and comment process.

22 The letter is long on rhetoric and innuendo and short on reliable legal analysis, and even suggests that the SEC should not provide notice or permit any comment before issuing a rule that subjects FIAs to the securities laws. Tyler Letter at 19-20. The letter entirely lacks support for many of its factual assertions and commits other significant analytical errors in connection with its discussion of state regulation of FIAs, the basic features of FIAs, the legal test applicable to determining whether an FIA is a security, the impact of SEC action on the insurance industry, numerous judicial opinions, and administrative law. One example of the letter's flawed analysis is its assertion that, under the Supreme Court test for determining whether FIAs should be treated as securities, it is relevant that purchasers face an investment risk that the letter labels as "complexity risk." *Id.* at 5, 10-12. The letter defines "complexity risk" as the risk that purchasers do not fully understand the FIA product, and argues that the more complex an insurance product is, the more likely that it is a security. *Id.* (acknowledging that "complexity risk" is a "novel" concept but arguing that "there is no reason why such risk should be ignored for purposes of distinguishing insurance products from investments" under Section 3(a)(8)). The assertion that the complexity of an insurance product bears on whether the product is a security has no basis in law, or even common sense. The letter further questions "the validity of *any* risk-based test" for determining

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FIAs "are often used to defraud investors." Tyler Letter at 16. Although in support of this assertion the letter cites to opinions that various courts have issued, it fails to recognize that these opinions merely summarize plaintiffs' attorneys' *allegations of fraud*, which do not constitute evidence that such fraud actually occurred. *See, e.g.*, Tyler letter at 16 (characterizing a court's opinion as "describing systematic fraud in the sale of [FIAs]," although the court only was repeating the plaintiff's unsustained and obviously biased allegations).[23] Examination of the "evidence" cited in the letter reveals that it provides no support for the Release's assertion that additional regulation of FIAs is necessary.

B. The data available reveals that complaints about FIA sales practices are isolated and sporadic.

The data that exist regarding FIA complaints refute the notion that there are pervasive consumer complaints about FIA sales practices. According to the information that the NAIC has compiled, the number of complaints against insurers regarding FIAs is low in absolute terms. Indeed, in 2007, industry-wide there only were 248 closed confirmed complaints[24] and for the current year, through the first quarter, there only were 38 closed confirmed complaints.[25]

Year	FIA Complaints
2005	105
2006	231
2007	248
2008 (through first quarter)	38

Source: http://www.naic.org/documents/cis_aggregate_complaints_by_coverage_types.pdf. Of course, this volume of complaints is small compared to the total sales of FIAs. For the first

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whether an FIA is a security. *Id.* at 9 (emphasis in original). This not only directly conflicts with well-established Supreme Court precedent, but also undermines the central premise of Proposed Rule 151A.

23 The letter is replete with similarly misleading characterizations of allegations in lawsuits. *See, e.g.*, Tyler letter at 16 (asserting that "courts have even *entertained* claims that the sale of [FIAs] to senior citizens constitutes an inherently unfair and deceptive scheme under state law" (emphasis added), which suggests that the court held that plaintiff's claims were meritorious, when in fact the court simply described plaintiff's allegations in the context of denying class certification), 17-18 (noting that the *Malone* case involved "an apparent victim of fraud in the sale of [FIAs]," and "a group of brokers and insurance agents who collaborated in a fraudulent scheme," even though the plaintiff merely alleged fraud and the case never was litigated to its merits).

24 A closed confirmed complaint is a resolved complaint for which a state insurance department upheld the consumer's complaint position. Closed confirmed complaints reflect only complaints made to state insurance departments and do not include complaints made directly to insurers.

25 The closed confirmed complaints for 2008 are prorated to reflect first-quarter only. There actually were 72 reported closed confirmed complaints through June 23, 2008. http://www.naic.org/documents/cis_aggregate_complaints_by_coverage_types.pdf.

quarter of 2008, there were only 6.57 complaints per one billion dollars in total FIA sales.

Year	FIA Complaints	FIA Sales (in billions)	Complaints Per Billion Dollars in Sales
2005	105	$27.20	3.860
2006	231	$25.40	9.09
2007	248	$24.80	10
2008	38	$5.78	6.57

See id.; 73 Fed. Reg. at 37,753; http://indexannuity.org/ic2008.htm#2007sales.

According to NAIC data, there also are few closed confirmed complaints regarding sales of FIAs relative to traditional fixed rate annuity products and variable annuities.[26]

Year	FIAs	Traditional Fixed Rate Annuities	Variable Annuities
2007	248	388	345
2008 (through March 31, 2008)	38	78	76

Source: http://www.naic.org/documents/cis_aggregate_complaints_by_coverage_types.pdf.[27] It is particularly significant that the NAIC data shows that there are fewer complaints regarding FIAs than variable annuities, given that variable annuities already are regulated as securities and subject to the federal securities laws.

C. There is adequate and effective state regulation of FIA sales practices.

Proposed Rule 151A also is premised on the mistaken belief that state insurance laws fail to provide FIA consumers with adequate protections against abusive sales practices, and do not mandate that prospective FIA customers receive sufficient disclosures about the product. 73 Fed. Reg. at 37,752-53, 68 (asserting that "most purchasers of indexed annuities have not received the benefits of federally mandated disclosure and sales practice protections"). *See also* Webcast of June 25, 2008, SEC meeting *available at* http://www.connectlive.com/events/secopenmeetings/ at 1:31:56-1:32:54 (contending that state insurance law has a "rather different focus" than federal securities laws, and does not serve the same purposes of disclosure and sales regulation as the

26 The variable annuity complaint figure is limited to closed confirmed complaints made to the NAIC. The actual number of complaints about variable annuities is likely to be substantially higher given that complaints about variable annuities, which are securities, are reported to multiple sources. FINRA would not disclose to representatives of American Equity the number of complaints that it received during 2007 and 2008 about variable annuities.

27 The closed confirmed complaints for 2008 are prorated to reflect first-quarter only. For traditional fixed rate annuities, there actually were 151 closed confirmed complaints through June 23, 2008, and 145 for variable annuities. http://www.naic.org/documents/cis_aggregate_complaints_by_coverage_types.pdf.

federal securities laws). The purported absence of these consumer protections, and the supposed benefit to consumers of receiving these consumer protections under the federal securities laws, are identified as the principal reasons that Proposed Rule 151A is necessary. 73 Fed. Reg. at 37,768. According to the Release, the sales practice protections that the federal securities laws would deliver to consumers include the broker-dealer's obligation to make only recommendations that are suitable for a purchaser, that agents and broker-dealers selling FIAs would be subject to a supervisory system, and that FIA sellers would be required to comply with specific records, supervisory, and other compliance requirements, including SEC general inspection and enforcement powers. *Id.* The Release further asserts that the federal securities laws would entitle prospective customers to "full and fair" disclosures about FIAs, including information related to costs, returns, benefits, and guaranteed and non-guaranteed elements of the contract. *Id.* Further, potential liability under the anti-fraud provisions of the federal securities laws would be an "additional encouragement" for insurers and agents to make complete and accurate disclosures. *Id.*

The contention that state laws do not already provide consumers with adequate sales practice protections or ensure that consumers receive sufficient disclosures is plainly wrong. Contrary to the central premise of Proposed Rule 151A, states actively and effectively regulate the sale of FIAs. For example, as part of comprehensive state sales practice and disclosure regulations that apply to FIAs, states already require agents to engage in suitability determinations, require that insurers and agents provide extensive disclosures to consumers, and maintain effective supervisory and enforcement systems.[28] Although not all states uniformly regulate every aspect of FIAs, the state insurance regulatory systems, when viewed as a whole, provide consumers with ample sales practice protections and ensure that consumers receive adequate disclosures.[29] The federal securities laws would confer little benefit on consumers.

The vast majority of states require that insurers and agents conduct suitability determinations that are as effective as those that broker-dealers must perform. These state suitability determination regulations mandate that, for any recommendation that a consumer purchase an FIA, the agent have reasonable grounds to believe that the FIA is appropriate for the purchaser, after taking into account the purchaser's insurance needs and financial objectives. *See* Appendix C; American Council of Life Insurers Law Issues Status Chart, *NAIC Annuity Disclosure & Suitability in Annuity Transactions Model Regulations* (June 23, 2008); *Suitability of Sales of Life Insurance and Annuities*, NAIC's Compendium of State Laws on Insurance Topics, IL-LI-30-07 (August 2006); *see, e.g.*, Okla. Admin Code tit. 365. §§ 25-17-2, 17-7(a) (2007). Another basic feature of these laws is to require insurers to implement a system that is reasonably designed to achieve an effective suitability determination process, and agent compliance therewith, including maintaining written procedures and records that form the basis

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28 Every state has an insurance commissioner who is responsible for supervising the insurance business transacted in the state and enforcing the insurance laws. In 12 states the state insurance commissioner is elected. In the remaining states, the commissioner is appointed. Black & Skipper, *supra* n. 10, at 947.

29 The majority of these state laws are based at least in part on NAIC model laws or regulations for annuities.

for particular recommendations, and conducting periodic reviews of records to detect and prevent violations of the process. *Id.* § 25-17-7(c).

State disclosure laws also require that a prospective FIA customer receive certain minimum information that enables the purchaser to understand basic features of the annuity contract. These laws generally require that the purchaser receive a standard annuity buyer's guide[30] and a contract summary, which must include specified disclosures about the contract's costs, returns, benefits, and guaranteed and non-guaranteed elements of the contract. *See, e.g.*, Ala. Admin. Code 482-1-129 (2008); Ariz. Rev. Stat. Ann. § 20-1242.01-.02 (2007). *See also* Appendix D; American Council of Life Insurers Law Survey, *Use of Disclosure Documents—Life Insurance and Annuities* (November 2007); *Life Insurance Disclosure Provisions*, NAIC's Compendium of State Laws on Insurance Topics, IL-LI-30-07 (February 2008). Further, state unfair trade practice laws, advertising regulations, and/or particular market conduct rules extensively regulate the representations that are permitted in connection with the marketing and sale of FIAs, and often require that insurance commissioners pre-approve the sales and marketing materials of insurers or agents. *See* Appendix E; 6 NAIC Model Laws, Regulations, and Guidelines, *Unfair Trade Practices Act*, NAIC 880-1 (January 2008); American Council of Life Insurers Law Survey, *Filing and Record Keeping Requirements for Life Insurance and Annuity Advertisements* (December 2007).

In addition to requiring that insurers and agents provide prospective consumers with the same substantive information about FIA contracts that the Release asserts consumers would receive under the federal securities laws, most states impose disclosure requirements that are absent from the federal securities laws, and which are specifically tailored to the unique nature of insurance products. For example, many state laws require that consumers receive "free-look" or "right to return" periods, which permit a consumer to opt out of an FIA contract for a full refund of premiums paid within a specified number of days after entering into the contract. *See* Appendix F; *see also* American Council of Life Insurers Law Survey, *Free Look/Right to Return Requirements*, (October 2007). The customer therefore receives additional time (while receiving the benefits of the annuity) to review the contract and the disclosures provided, to determine whether terms of the policy are satisfactory. *See, e.g.*, Ark. Code. Ann. § 23-79-112(f) (2007) (10 day free-look period); Cal. Ins. Code § 10127.10 (West 2005) (30 day free-look period). Another example of these state-law enhancements to traditional disclosure laws are heightened disclosure requirements and other sales practice protection rules that states impose in connection with transactions involving the replacement of insurance contracts (*i.e.*, if a customer terminates or lets lapse an existing policy at the same time he or she is purchasing another policy). These laws aim to ensure that consumers are aware of any drawbacks to replacing the existing policy, such as potential loss of accumulated value, and to prevent agents from "churning" or "twisting." *See* Appendix G; *see also* American Council of Life Insurers Law Survey, *Replacement of Life Insurance and Annuities* (December 2007). Agents and insurers typically must follow highly structured processes that confirm that the purchaser is aware of the potential downside to the

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30 The requisite buyer's guide typically is an NAIC guide that explains in detail the general features of an FIA contract.

replacement, provide consumers with specific additional disclosures about the replacement, report the potential replacement to the existing and replacing insurer, and maintain certain records of this process. *See, e.g.*, 69 Fla. Admin. Code Ann. § 69o-151.05-69o-151.08 (2008).

Significantly, state insurance commissioners *actively* enforce compliance with these sales protection and disclosure laws through supervisory systems that include, for example, market conduct examinations, agent licensing requirements, and penalties for violations. These systems, which also devote resources to conducting inquiries on behalf of any consumers that lodge complaints about FIA sales, provide the same oversight and enforcement benefits to consumers as the federal securities laws would.

Market conduct examinations subject insurers transacting business within a particular state to periodic reviews that confirm that insurers are complying with market conduct laws. *See* Appendix H. These reviews, which include review of product design and marketing, advertising, licensing, complaint handling, policyholder services, and claims practices, are in addition to the examinations of domestic insurers' financial condition, which are intended to ensure solvency. States often make publicly available the results of these market conduct examinations. *See, e.g.*, Vermont market conduct examination reports, *available at* http://www.bishca.state.vt.us/InsurDiv/market_conduct_exams/a_marketconduct _reports2.htm. Further, every state requires that agents or brokers who sell insurance products in the state maintain a license. Black & Skipper, at 953. Licensing requirements ensure that the agent or broker is competent to sell specific insurance products in accordance with state laws, and often mandate continuing education requirements for licensed agents or brokers, *id.*, at 954; *see, e.g.*, Fla. State. Ann. § 626.2815 (West) (generally requiring 24 hours of continuing education credits every two years) and/or specific licensing requirements for agents who sell FIAs, *see, e.g.*, Iowa Admin. Code 191-15.80 (507B,522B) *et seq.* The penalties that states impose for violations of market conduct rules (often in response to investigations conducted after receiving a consumer complaint) range from suspension, revocation, or non-renewal of a violator's license, *see, e.g.*, Black and Skipper, at 953-54, to issuance of cease and desist orders against violators, civil penalties, and criminal penalties. *See, e.g.*, Hawaii. Rev. Stat. § 431:13-201 (2005) (authorizing penalties for violations of insurance unfair trade practice laws). These penalties are ample incentive for insurers and agents to comply with state sales practice and disclosure regulations.

The table below details the states with forms of the laws and regulations described above (*see also* Appendices C-H) and makes clear that the federal securities laws would confer little, if any, benefit on consumers.

		Disclosures				Supervision and Enforcement		
	Suitability[31]	Traditional Disclosure[32]	Unfair Trade/ Advertising[33]	Free Look Periods[34]	Replacement Regulations[35]	Market Conduct Examinations[36]	Licensing[37]	Penalties[38]
Alabama	✓	✓	✓	✓	✓	✓	✓	✓
Alaska	✓	✓	✓	✓	✓	✓	✓	✓
Arizona	✓	✓	✓	✓	✓	✓	✓	✓
Arkansas	✓	✓	✓	✓	✓	✓	✓	✓
California		✓	✓	✓	✓	✓	✓	✓
Colorado	✓	✓	✓	✓	✓	✓	✓	✓
Connecticut	✓	✓	✓	✓		✓	✓	✓
Delaware	✓		✓	✓	✓	✓	✓	✓
District of Columbia			✓			✓	✓	✓
Florida	✓	✓	✓	✓	✓	✓	✓	✓
Georgia	✓	✓	✓	✓	✓	✓	✓	✓
Hawaii	✓	✓	✓	✓	✓	✓	✓	✓
Idaho	✓		✓	✓	✓	✓	✓	✓
Illinois	✓		✓	✓	✓	✓	✓	✓
Indiana	✓	✓	✓	✓	✓	✓	✓	✓
Iowa	✓	✓	✓	✓	✓	✓	✓	✓
Kansas	✓		✓	✓	✓	✓	✓	✓
Kentucky	✓	✓	✓	✓	✓	✓	✓	✓
Louisiana	✓	✓	✓	✓	✓	✓	✓	✓
Maine	✓	✓	✓	✓	✓	✓	✓	✓
Maryland	✓	✓	✓	✓	✓	✓	✓	✓

31 *See* Appendix C.

32 *See* Appendix D.

33 *See* Appendix E.

34 *See* Appendix F.

35 *See* Appendix G.

36 *See* Appendix H.

37 *See* Black & Skipper, *supra* n. 10, 953.

38 *See, e.g.*, Black and Skipper, *supra* n. 10, 953-54.

		Disclosures				Supervision and Enforcement		
	Suitability[31]	Traditional Disclosure[32]	Unfair Trade/ Advertising[33]	Free Look Periods[34]	Replacement Regulations[35]	Market Conduct Examinations[36]	Licensing[37]	Penalties[38]
Massachusetts	✓		✓	✓	✓	✓	✓	✓
Michigan	✓		✓	✓		✓	✓	✓
Minnesota	✓		✓	✓	✓	✓	✓	✓
Mississippi			✓	✓	✓	✓	✓	✓
Missouri		✓	✓	✓	✓	✓	✓	✓
Montana	✓	✓	✓	✓	✓	✓	✓	✓
Nebraska	✓		✓	✓	✓	✓	✓	✓
Nevada	✓	✓	✓	✓	✓	✓	✓	✓
New Hampshire	✓	✓	✓	✓	✓	✓	✓	✓
New Jersey	✓	✓	✓	✓	✓	✓	✓	✓
New Mexico		✓	✓	✓	✓	✓	✓	✓
New York		✓	✓	✓	✓	✓	✓	✓
North Carolina	✓	✓	✓	✓	✓	✓	✓	✓
North Dakota	✓	✓	✓	✓		✓	✓	✓
Ohio	✓	✓	✓	✓	✓	✓	✓	✓
Oklahoma	✓	✓	✓	✓	✓	✓	✓	✓
Oregon	✓		✓	✓	✓	✓	✓	✓
Pennsylvania			✓	✓	✓	✓	✓	✓
Rhode Island	✓	✓	✓	✓	✓	✓	✓	✓
South Carolina		✓	✓	✓	✓	✓	✓	✓
South Dakota	✓		✓	✓	✓	✓	✓	✓
Tennessee	✓		✓	✓	✓	✓	✓	✓
Texas	✓		✓	✓	✓	✓	✓	✓
Utah	✓	✓	✓	✓	✓	✓	✓	✓
Vermont			✓	✓	✓	✓	✓	✓
Virginia	✓		✓	✓	✓	✓	✓	✓
Washington		✓	✓	✓	✓	✓	✓	✓
West Virginia	✓		✓	✓	✓	✓	✓	✓
Wisconsin	✓	✓	✓	✓	✓	✓	✓	✓
Wyoming			✓	✓	✓	✓	✓	✓

The Release ignores both the existence of these state laws, and the fact that they already provide consumers with the same substantive benefits as would the federal securities laws. Although not all states regulate every aspect of FIA sales, the state insurance regulatory regimes, when viewed as a whole, provide consumers with strong protections against sales practice abuses and ensure that consumers receive adequate disclosures. It also is important that many of these annuity disclosure and sales practice protection laws were enacted in recent years. FIAs have become increasingly prevalent since they first were introduced 10 years ago, and insurance laws have evolved to provide greater protections for annuity consumers. The rapid reaction of states to pass these laws, and of the NAIC to develop model state laws upon which they are based, highlights the fact that states are most effective in regulating these products.

* * *

American Equity strongly supports robust oversight of the sale of FIAs. States, however, already effectively regulate this aspect of FIAs, making Proposed Rule 151A unnecessary. Rather than enhance state regulation, federal oversight only would add a redundant layer to an already highly reticulated regulatory scheme. Further, to the extent that federal oversight reduces the state role in regulating FIAs, it would be to the detriment of consumers. State insurance authorities foster continuous innovation in the collective state regulatory system that has served as the foundation for the nation's dynamic and competitive insurance industry. Proposed Rule 151A risks unraveling this well-functioning system and hampering future improvements. Given the extensive regulation already in place, Proposed Rule 151A is unlikely to confer any benefit on consumers, and therefore should not be adopted as a final rule.

III. Proposed Rule 151A would have a substantial negative impact on the insurance industry and insurance consumers.

The effects of Proposed Rule 151A on the insurance industry and consumers would be profoundly negative. Given the paucity of evidence that FIAs require additional regulation, and because state regulation effectively confers on consumers the same substantive protections as the securities laws are designed to provide, the benefits of Proposed Rule 151A are very low. Conversely, as described below, the costs of Proposed Rule 151A are substantial. To mitigate the negative effects of the rule, any final rule should include an exemption for FIAs already subject to adequate state consumer protection regulations.

A. The Release recognizes significant costs to Proposed Rule 151A.

The Release recognizes that Proposed Rule 151A would lead insurance companies and consumers to bear some or all of following six categories of costs:

(1) Insurers would incur expenses in performing the analysis necessary to determine whether an FIA is a security under the second prong of Proposed Rule 151A. Each insurer would determine whether "amounts payable by the issuer under the contract are more likely than not to exceed the amounts guaranteed under the contract," which "calls for the insurer to analyze expected outcomes under various scenarios involving different facts and circumstances." The Release notes that the analyses insurers already undertake may not be applicable because, among other reasons, they are different in nature or scope, or because their timing does not coincide with that required under Proposed Rule 151A. The costs of performing the necessary analysis for Proposed Rule 151A "could include the costs of software, as well as the costs of internal personnel and external consultants (e.g., actuarial, accounting, legal)." 73 Fed. Reg. at 37,769-70.

(2) Insurers would bear the cost of preparing and filing registration statements for FIAs that are treated as securities under Proposed Rule 151A. The Release estimates that insurers collectively would be required on an annual basis to register 400 contracts at a total cost of $82.5 million. Specifically, the Release estimates registration would require insurers collectively to expend annually 60,000 hours of in-house company time at a cost of $10.5 million and to spend $72 million for the services of outside professionals. *Id.* at 37,770.

(3) Insurers would bear the cost of printing and disseminating prospectuses for FIAs that under Proposed Rule 151A would be treated as securities. The Release estimates that each prospectus would cost $0.35 to print and $1.21 to mail. It therefore would cost an insurer $1.56 per prospectus that is mailed. *Id.*

(4) Insurers may incur expenses in connection with entering into network arrangements with registered broker-dealers. Under Proposed Rule 151A, only registered broker-dealers or persons associated with a registered broker-dealer through a networking arrangement could effect transactions involving FIAs that are securities. Of these alternatives, the Release notes that it is most likely that entities distributing FIAs would enter into a networking arrangement with a registered broker-dealer. The Release further notes that the costs to an insurer of entering into such a networking arrangement would include the expense of contracting with the broker-dealer with respect to the terms, conditions, and obligations of each party, legal fees, and ongoing costs of monitoring compliance with the arrangement. *Id.*

(5) Insurers may cease issuing FIAs that are determined to be securities under proposed Rule 151A and consequently experience a loss of revenue. *Id.*

(6) Proposed Rule 151A may result in diminished competition among insurers of FIAs. According to the Release, to avoid undertaking the analysis required under Proposed Rule 151A and to register FIAs as securities, some insurance companies may cease to issue FIAs that would be deemed to be securities. There could then be "fewer issuers of [FIAs], which may result in reduced competition, . . . [which] may affect investors through potentially less favorable terms of insurance products and other financial products, such as increases in direct or indirect fees." *Id.*

The Release makes clear that the costs of Proposed Rule 151A to the insurance industry and insurance consumers would be significant. These costs alone compel the conclusion that any final rule should include an exemption for FIAs that already are subject to adequate state consumer protection regulations. Such an exemption is even more important, however, because the costs of proposed Rule 151A are likely to be even higher than those described in the Release.[39]

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[39] The Release reasons that the Proposed Exemption will result in cost-savings for 24 insurance companies that currently are subject to the Exchange Act reporting requirements. American Equity's opposition to Proposed Rule 151A should not be construed as advocacy against the Proposed Exemption.

B. The cost to the insurance industry from associating with broker-dealer networks would be far higher than the Release estimates.

Proposed Rule 151A would impose staggering costs on the insurance industry in connection with the requirement that FIA sales be conducted through broker-dealers, rather than traditional and established agent networks. Although the Release acknowledges that Proposed Rule 151A would impose costs on FIA distributors that currently are not parties to a broker-dealer network or registered as broker-dealers, *id.* at 37,770, it severely underestimates the impact Proposed Rule 151A would have on many insurance companies' distribution networks and the livelihood of traditional insurance agents. Insurance companies typically distribute FIAs through agents who also sell the full complement of an insurance company's products. It is currently estimated that independent insurance agents distribute 90 percent of FIAs, and between 40 and 70 percent of those insurance agents are not licensed to sell securities (although it is unknown how many of the insurance agents that are licensed to sell securities are associated with a broker-dealer network). *See, e.g.,* Jack Marrion, *The Proposed Rule Will Sock It to Index Annuity Distributors*, National Underwriter, August 4, 2008 (estimating that 45,000 of the approximately 100,000 annuity agents are not licensed to sell securities).

If Proposed Rule 151A is adopted, the Release recognizes that insurance agents are unlikely to become licensed *and* associate with a broker-dealer, and also recognizes certain costs that would be associated with agents' more probable choice of entering into a networking arrangement with a broker-dealer. 73 Fed. Reg. at 37,770. The Release does not acknowledge that many insurance agents would choose to cease selling FIAs because the costs associated with entering into such a networking arrangement are likely to outweigh the benefits of selling FIAs. Insurers not only will realize less revenue from this contracted distribution channel for FIAs, but also will incur significant transaction costs related to either shifting its distribution networks to agents permitted to sell FIAs (and away from agents with which the insurer already has an established and often long-standing relationship) or building new network channels for its products. Further, insurers that sell both FIAs and insurance products that are not treated as securities would incur significant expense to maintain parallel distribution networks—agents affiliated with broker-dealers to sell FIAs and other agents to sell traditional life insurance, traditional fixed-annuities, and other insurance products that are not regulated as securities—which would be highly inefficient. Insurers may thus concentrate their *entire* distribution networks with those agents that are affiliated with broker-dealers and no longer utilize other traditional insurance agents. The Release fails to recognize the impact of this wholesale shift in distribution networks on insurers and on the many thousands of insurance agents who no longer could sell FIAs and the other insurance products that FIA insurers offer. The costs of Proposed Rule 151A, therefore, are likely to be significantly more costly to insurers and to the industry than the estimate in the Release, which was limited to the expense of contracting with broker-dealer networks.

Further compounding this problem, under Proposed Rule 151A, an FIA product may be treated as a security during some years and not during other years. Under Proposed Rule 151A, the status of whether an FIA is a security may differ from year to year, depending on whether the insurer predicts that the "amounts payable by the issuer under the contract are more likely than not to exceed the amounts guaranteed under the contract." Because the insurer may change its forecast from year to year, the FIAs that an insurer sells in one year may be treated as securities, and the same FIA products may not be securities if sold in other years. In such a situation, only broker-dealers legally would be permitted sell a particular FIA during certain years, while in other years traditional insurance agents could sell the same product. This inconsistency in treatment would lead to tremendous uncertainty from year to year for insurers and their distribution networks.

C. The complexity of Proposed Rule 151A would impose significant costs on insurance companies.

Some of the highest costs of Proposed Rule 151A stem from the analysis insurers must perform to determine whether "[a]mounts payable by the issuer under the contract are more likely than not to exceed the amounts guaranteed under the contract." *Id.* at 37,774. As an initial matter, the Release incorrectly concludes that the cost for insurers to perform this analysis will not be significant because insurers "routinely undertake such analyses for purposes of pricing and hedging their contracts." *Id.* at 37,760. American Equity certainly does not model projected contract values to minimum guaranteed values at particular points in time and furthermore is unaware of any FIA provider that does. Contrary to the Release, insurers likely will incur significant costs to perform the analysis. 73 Fed. Reg. at 37,769.

Of even greater significance is that the analysis required under Proposed Rule 151A will cause insurers to face substantial uncertainty as to whether FIAs are securities. The necessary analysis would be extraordinarily difficult, if it is even possible, to perform. Among other fundamental difficulties, the analysis requires the insurer to forecast the future performance of the equity and debt markets over a number of years to determine whether "amounts payable by the issuer under the contract are more likely than not to exceed the amounts guaranteed under the contract." *Id.* at 37,774. It is well-accepted that the performance of these markets cannot be predicted. *See, e.g.*, Congressional Budget Office Revenue and Tax Policy Brief, No. 3 (Dec. 3, 2002) (noting that the Congressional Budget Office does not forecast expected tax receipts from stock market-related transactions because "stock prices cannot be predicted"). The Release provides little guidance regarding how to perform this complex analysis, and instead merely lists certain general assumptions that the insurer will have to make that relate to (1) insurer behavior, (2) purchaser behavior, and (3) market behavior. Assuming, as the Release does, that insurers "will need to assign probabilities to various potential behaviors," *id.* at 37,760, provides no meaningful guidance regarding whether an FIA would be deemed a security under Proposed Rule 151A.

One effect of this uncertainty is that insurers will bear significant and unnecessary litigation risks. The Release acknowledges that insurers will need to make extensive and complex assumptions to support their determinations, and that an insurer, "if challenged in litigation, [would] be required to prove that its methodology and its economic, actuarial, and other assumptions were reasonable, and that the computations were materially accurate." *Id.* at 37,760. Proposed Rule 151A provides that the insurer's self-determination is conclusive if, *inter alia*, "[b]oth the methodology and the economic, actuarial, and other assumptions used in the determination are reasonable." *Id.* at 37,774. This standard is far too vague to provide certainty to insurers—and in fact invites the very sort of second-guessing in litigation that the Release suggests should be avoided. Further, the insurer could not be certain that a court would recognize its determination as "reasonable." The litigation insurers likely will face will not merely be expensive in terms of legal fees and other inefficiencies, but also with respect to potential damages that are imposed under the federal securities laws if insurers' determinations are held, in hindsight, to be "unreasonable." It is patently unfair for insurers to bear such a high burden.

The insurer bears another significant litigation risk relating to its analysis under Proposed Rule 151A. An insurer that determines that its FIA is a security effectively would be publicly announcing that the insurance company expects a referenced index to outperform the MGIR return over the life of the contract. This is problematic because investors may rely on the insurer's forecast of the market and would falsely add an element of guarantee that an insurance company does not (and would not rationally) intend.[40] Most significantly, this may lead to litigation under the anti-fraud provisions of the securities laws when the index does not outperform the MGIR return over various periods of time. In contrast to the Release's recognition of the importance "to provide certainty to insurers with respect to the application of the proposed rule," 73 Fed. Reg. 127 at 37760, the second prong of Proposed Rule 151A would mire insurers in protracted litigation.[41]

D. The impact on insurance consumers from diminished competition would be far greater than described in the Release.

The diminished competition between insurers offering FIAs that likely would result from proposed Rule 151A could adversely affect consumers' access to products that provide the core insurance characteristics of the FIA. The Release recognizes that this diminished competition

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40 The Release recognizes that there will be public reliance on the issuer's determination but describes it as a benefit. 73 Fed. Reg. at 37,768 (noting that an FIA not registered as a security "would reflect the insurer's determination that investors in the annuity would not receive more than the amounts guaranteed under the contract at least half the time. This information would help a purchaser to evaluate the value of the indexed-based return").

41 FIA insurers will face additional expensive litigation because Proposed Rule 151A is in material conflict with SEC Rule 151, 17 C.F.R. § 230.151 (2008), which exempts certain FIAs from the securities laws pursuant to Section 3(a)(8). Many FIAs, like the one at issue in the *Malone* case, satisfy the Rule 151 safe harbor and are exempt from registration under the Securities Act. Under Proposed Rule 151A, the same FIAs may be required to be registered pursuant to the Securities Act. An insurer will therefore face significant uncertainty as to whether its FIAs are securities. The Release acknowledges that most FIAs satisfy the first two requirements of Rule 151, but asserts that FIAs fail the third requirement. 73 Fed. Reg. at 37,756 n.38. This analysis is flawed because it imposes a requirement not apparent from a reasonable reading of Rule 151, *i.e.*, that the interest rate be determined prospectively. *See Malone*, 225 F. Supp. at 752-54 (holding that an American Equity FIA satisfied the requirements of the Rule 151 safe harbor and thus was exempt from the securities laws pursuant to Section 3(a)(8)). Moreover, with respect to an FIA product that an insurer did not register as a security in reliance on Rule 151, but that is registered as a security pursuant to Proposed Rule 151A, plaintiffs' attorneys may assert a claim that the insurer violated the securities laws by historically not registering the FIA as a security. The insurer would have to defend against such a lawsuit regardless of how baseless the theory.

may lead to consumers receiving "less favorable terms [on] insurance products and other financial products, such as increases in direct or indirect fees." 73 Fed. Reg. at 37,770. An additional result of this diminished competition may be that the demand for FIA products will need to be satisfied by products that are index-linked but that are not subject to state insurance regulation, and thus lack the insurance guarantees of FIAs, such as the state monitoring of the financial solvency of the insurer and perhaps the disclosure and suitability requirements. For example, market-indexed certificates of deposit exemplify the type of product that could become more prevalent if Proposed Rule 151A reduces the supply of FIAs in the marketplace. *See, e.g.*, Equity Linked CDs, *available at* http://www.sec.gov/answers/equitylinkedcds.htm. This product, which is a certificate of deposit that provides interest payments that vary according to the performance of an index, closely resembles an FIA. However, it lacks many of the benefits and safeguards of FIAs including, among others, income tax deferral, guaranteed income for life, and state law suitability reviews, disclosure requirements, and other sales practice protections. Further, although subject to bank regulation, this product is not subject to the federal securities laws, which frustrates the intent of Proposed Rule 151A to more closely regulate products that expose individuals to returns linked to the performance of an underlying index. *Id.* Additionally, although the Release recognizes that some insurance companies may cease to issue FIAs if they become securities to avoid the federal regulatory burden, it fails to contemplate that some insurers might modify their FIA products so that they are able to cease operating as insurance companies subject to state regulation. Although these products would be regulated by the securities laws, consumers mistakenly might understand these products to offer greater guarantees than they do. With respect to either example, consumers would be deprived of the benefit of the strict state monitoring of the financial solvency of the insurer and the state guarantee funds that are available to compensate beneficiaries in the event of default. Consumers also would lose the benefit of state rules governing the marketing, sale, and suitability of FIAs.

Conclusion

American Equity believes that this comment demonstrates compelling reasons why Proposed Rule 151A should not be adopted as a final rule and that, at minimum, any final rule that may be issued should include certain specific exemptions. We would appreciate the opportunity to work with the SEC as it considers this comment and others that it receives.

If you have any questions or would like additional information, please contact me.

Respectfully submitted,

Eric J. Gorman

cc: Honorable Christopher Cox, Chairman (via Federal Express)
Honorable Kathleen L. Casey, Commissioner (via Federal Express)
Honorable Elisse B. Walter, Commissioner (via Federal Express)
Honorable Luis A. Aguilar, Commissioner (via Federal Express)
Honorable Troy A. Paredes, Commissioner (via Federal Express)
Brian Cartwright, General Counsel, Office of the General Counsel (via Federal Express)

APPENDIX A

The table below illustrates that FIA and traditional fixed rate annuities offer customers the same insurance guarantees, including a fixed return that does not risk the purchaser's principal. The only material difference between the two products is that an FIA permits the customer's credited interest rate to be higher than the MGIR through reference to an index.

	American Equity Traditional Fixed Rate Annuity	**American Equity FIA**
Guarantee of premium and minimum interest	✓	✓
Annual interest at rates declared by the insurer	✓	
Annual interest referenced to an external index		✓
Tax-deferred growth	✓	✓
No up front sales charges or annual fees	✓	✓
Penalty-free 10 percent annual withdrawals starting in year 2	✓	✓
Penalty-free systematic interest withdrawals	✓	✓
Surrender charges apply for withdrawals above 10%, waived at death	✓	✓
Additional liquidity upon nursing home confinement or terminal illness	✓	✓

APPENDIX B

The table below shows the average age of holders of American Equity FIAs as of June 30, 2008. The percentage of policies for each age group is a weighted average based upon annuity contract value. Over the last several years American Equity has observed a declining trend in the average issue age.

Age	Policy Count	Contract Value	Weighted Average Percentage
0-39	9,876	254,418,576	1.69%
40-44	8,215	291,087,492	1.94%
45-49	13,284	550,564,938	3.66%
50-54	19,693	972,962,913	6.48%
55-59	29,407	1,708,508,259	11.37%
60-64	39,897	2,490,529,309	16.58%
65-69	47,017	2,789,012,703	18.57%
70-74	44,457	2,564,437,468	17.07%
75-79	35,903	2,091,798,046	13.92%
80-84	18,269	1,134,585,999	7.55%
85-89	2,457	173,083,768	1.15%
90+	19	1,299,194	0.01%

APPENDIX C

The table below lists state statutes and regulations that require forms of suitability determination processes in connection with FIA sales.

State	Statute
Alabama	Ala. Admin. Code r. 482-1-137-.01 to .10
Alaska	Alaska Admin. Code tit. 3, §§ 26.770 to 789
Arizona	Ariz. Rev. Stat. § 20-1243.03
Arkansas	Ark. Code Ann. §§ 23-66-206(2), 23-66-307; Ark. Ins. Comm'n Bull. 8-2004; 054 Ark. Code. R. § 082
Colorado	3 Colo. Code Regs. § 702-4 (regulation 4-1-11)
Connecticut	Conn. Agencies Regs. § 38a-432a-5
Delaware	Del. Code Regs. § 18-1200-1214
Florida	Fla. Stat. § 627.4554
Georgia	Ga. Comp. R. & Regs. 120-2-94-.01 *et seq.*
Hawaii	Haw. Rev. Stat. § 431:10D-623
Idaho	Idaho Code Ann. § 41-1940; Idaho Admin. Code r. 18.01.09.000 to r. 18.01.09.999
Illinois	Ill. Admin. Code tit. 50, § 3120.10 *et seq.*
Indiana	Ind. Code § 27-4-9-1; Ind. 760 Admin. Code 1-72-4
Iowa	Iowa Code Ann. § 507B.4B; Iowa Admin. Code r. 191-15.71(507B)
Kansas	Kan. Admin. Regs. §§ 40-2-14 & 40-2-14a
Kentucky	806 Ky. Admin. Regs. 12:120 & 15:070
Louisiana	La. Admin. Code. tit. 37, pt. XIII, § 11711
Maine	02-031-917 Me. Code R. § 6
Maryland	Md. Code Regs. 31.09.12.04
Massachusetts	211 Mass. Code Regs. 96.06
Michigan	Mich. Comp. Laws Ann. § 500.4155
Minnesota	Minn. Stat. Ann. § 60K.46
Montana	Mont. Code Ann. § 33-20-805
Nebraska	Neb. Rev. Stat. § 44-8106
Nevada	Nev. Admin. Code § 688A.455
New Hampshire	N.H. Code Admin. R. Ins. 301.06
New Jersey	N.J. Admin. Code §§ 11:4-34.1 & 11:4-34.22
North Carolina	N.C. Gen. Stat. Ann. § 58-60-170
North Dakota	N.D. Cent. Code § 26.1-34.2-03
Ohio	Ohio Admin. Code 3901:6-13
Oklahoma	Okla. Admin. Code § 365:25-17-7
Oregon	Or. Rev. Stat. § 731.154; Or. Admin. R. 836-080-0090
Rhode Island	02-030-012 R.I. Code R.
South Dakota	S.D. Codified Laws § 58-33A-16
Tennessee	Tenn. Comp. R. & Regs. 0780-1-86-.06

Texas	Tex. Ins. Code Ann. § 1115.051
Utah	Utah Admin. Code r. R590-230-1 to r. R590-230-9
Virginia	14 Va. Admin. Code § 5-45-10 *et seq.*
West Virginia	W. Va. Code R. §§ 114-11B to -7
Wisconsin	Wis. Stat. Ann. § 628.347

APPENDIX D

The table below lists state statutes and regulations that require insurers to disclose to prospective customers specific information about FIAs.

State	Statute
Alabama	Ala. Admin. Code r. 482-1-129-.05
Alaska	Alaska Admin. Code tit. 3, §§ 26.750 to 769
Arizona	Ariz. Rev. Stat. § 20-1242.01-.02
Arkansas	054 Ark. Code R. § 017
California	Cal. Ins. Code § 762; *id.* § 789; *id.* §§ 10127.8 to .13
Colorado	3 Colo. Code Regs. § 702-4 (regulation 4-1-12)
Connecticut	Conn. Gen. Stat. §§ 38a-295 to -300
Florida	Fla. Stat. § 626.99(4)
Georgia	Ga. Comp. R. & Regs. 120-2-11-.06
Hawaii	Haw. Rev. Stat. § 431:10D-603
Indiana	Ind. Code Ann. § 27-1-12.5-8; 760 Ind. Admin. Code 1-48-7 to -12
Iowa	Iowa Admin. Code. r. 191-15.64
Kentucky	806 Ky. Admin. Regs. 12:150
Louisiana	La. Rev. Stat. Ann. § 22:173.1H
Maine	02-031-915 Me. Code R. § 1; *id.* § 1, App. A
Maryland	Md. Code Regs. 31.15.04.04 to .05.
Missouri	Mo. Code Regs. Ann. tit. 20, § 400-5.410
Montana	Mont. Admin. R. 6.6.801
Nevada	Nev. Admin. Code § 688A.470
New Hampshire	N.H. Code Admin. R. Ins. 306.09, Table 306-1
New Jersey	N.J. Admin. Code §§ 11:4-43.1 to -43.7
New Mexico	N.M. Admin. Code § 13.9.12.9
New York	N.Y. Ins. Law § 3209
North Carolina	N.C. Gen. Stat. § 58-60-15
North Dakota	N.D. Cent. Code § 26.1-34-07
Ohio	Ohio Admin. Code 3901-6-14
Oklahoma	Okla. Admin. Code § 365:25-19-5
Rhode Island	R.I. Gen. Laws § 27-4.4-9
South Carolina	S.C. Code Ann. Regs. 69-39
Utah	Utah Code Ann. § 31A-22-425; Utah Admin. Code r. R590-229-1 to -9
Washington	Wash. Admin. Code § 284-23-310 to -370
Wisconsin	Wis. Admin. Code Ins. § 2.15(8)

APPENDIX E

The table below lists examples of state unfair trade practices and advertising statutes and regulations that apply to FIA sales.

State	Statute
Alabama	Ala. Code § 27-12; Ala. Admin. Code r. 482-1-132-.10
Alaska	Alaska Stat. §§ 21.36.010 to .460
Arizona	Ariz. Rev. Stat. Ann. §§ 20-441 to -469, 20-1110; Ariz. Admin. Code §§ 20-6-201 to -202
Arkansas	Ark. Code Ann. § 23-66-202; 054-00-017 Ark. Code R. § 1 *et seq.*
California	Cal. Ins. Code §§ 790 to 790.15, 780-84; Cal. Code. Regs. tit. 10, § 2695.1 *et seq.*
Colorado	Colo. Rev. Stat. §§ 10-3-1103 to -1104; 3 Colo. Code Regs. § 702-4 (regulation 4-1-2)
Connecticut	Conn. Gen. Stat. §§ 38a-815- to -819, 38a-824 to -832; Conn. Agencies Regs. §§ 38a-819-21 to -31
Delaware	Del. Code Ann. tit. 18, §§ 2301-2316
District of Columbia	D.C. Code § 31-2231
Florida	Fla. Stat. §§ 626.951 to .9641; Fla. Admin. Code Ann. ch. 690-150
Georgia	Ga. Code Ann. §§ 33-6-1- to -14; Ga. Comp. R. & Regs. ch. 120-2-11
Hawaii	Haw. Rev. Stat. §§ 431:13-101 to -204
Idaho	Idaho Code §§ 41-1301 to -1331
Illinois	215 ILCS 5/421-5/434; Ill. Admin. Code tit. 50, pt. 909
Indiana	Ind. Code §§ 27-4-1-1 to -18
Iowa	Iowa Code §§ 507B.1 to .14; Iowa Admin. Code §§ 191-14(507B) to -15(507B)
Kansas	Kan. Stat. Ann. §§ 40-2401 to -2421; Kan. Admin. Regs. § 40-9-118
Kentucky	Ky. Rev. Stat. Ann. § 304.12; 806 Ky. Admin Regs. 12:010 to :170
Louisiana	La. Rev. Stat. Ann. §§ 22:1211 to :1220; La. Admin. Code tit. 37, §§ 4117, 7917
Maine	Me. Rev. Stat. Ann. tit. 24-A , §§ 2151-2187
Maryland	Md. Code Ann. Ins. § 27; Md. Code Regs. 31.15
Massachusetts	Mass. Gen. Laws chs. 176D, 180-182
Michigan	Mich. Comp. Laws §§ 500.2001 to .2093; Mich. Admin. Code r. 500.1371 to .1387
Minnesota	Minn. Stat. §§ 72A.17 to .32; Minn. RR. 2790.0100 to .2200

Mississippi	Miss. Code. Ann. §§ 83-5-29 to -51
Missouri	Mo. Rev. Stat. §§ 375.930 to .948; 20 Mo. Code Regs. Ann. *tit.* 20, §§ 400-5.100, .200
Montana	Mont. Code Ann. tit. 33, ch. 18
Nebraska	Neb. Rev. Stat. §§ 44-1522 to -1535; 210 Neb. Admin. Code § 50
Nevada	Nev. Rev. Stat. § 686A
New Hampshire	N.H. Rev. Stat. Ann. §§ 417:1 to :17
New Jersey	N.J. Stat. Ann. §§ 17:29B-1 to -14; N.J. Admin. Code §§ 11:2-23.1 to .10
New Mexico	N.M. Stat. Ann. ch. 59A, art. 16; N.M. Code R. §§ 13:9.2.13 to .16
New York	N.Y. Ins. Law §§ 2401-2409; N.Y. Comp. Codes R. & Regs. tit. 11, § 219
North Carolina	N.C. Gen. Stat. §§ 58-63-1 to -60; 11 N.C. Admin. Code § 12.0431
North Dakota	N.D. Cent. Code §§ 26.1-04-01 to -019; N.D. Admin. Code ch. 45-04-10
Ohio	Ohio Rev. Code Ann. §§ 3901.19 to .221
Oklahoma	Okla. Stat. tit. 36, §§ 1201-1219; Okla. Admin. Code §§ 365:10-3-30 to -39
Oregon	Or. Rev. Stat. §§ 746.005 to .270; Or. Ins. Div. Bull. INS 2000-2
Pennsylvania	40 Pa. Cons. Stat. Ann. § 1171.1 to .11; 31 Pa. Code § 51
Rhode Island	R.I. Gen. Laws § 27-29
South Carolina	S.C. Code Ann. §§ 38-57-10 to -320
South Dakota	S.D. Codified Laws tit. 58, ch. 33; *id.* § 58-33A-11
Tennessee	Tenn. Code Ann. §§ 56-8-101 to -120; Tenn. Comp. R. & Regs. 0780-1-33-.10
Texas	Tex. Ins. Code Ann. §§ 541.001 to .454; 28 Tex. Admin. Code § 21
Utah	Utah Admin. Code rr. 590-154, -130
Vermont	Vt. Stat. Ann. tit. 8 §§ 4721-4726
Virginia	Va. Code Ann. §§ 38.2-500 to -516; 14 Va. Admin. Code 5-40
Washington	Wash. Rev. Code Ann. ch. 48.30; Wash. Admin. Code §§ 284-23-010 to -110
West Virginia	W. Va. Code §§ 33-11-1 to -10; W. Va. Code R. 114-11
Wisconsin	Wis. Stat. §§ 628.31 to .49; Wis. Admin. Code Ins. § 2.16
Wyoming	Wyo. Stat. Ann. §§ 26-13-101 to -124

APPENDIX F

The table below lists state statutes and regulations that require forms of "free-look" periods in connection with FIA sales.

State	Statute
Alabama	Ala. Admin. Code r. 482-1-129-.05(1)(c), -1-133-.06(1)(d)
Alaska	Alaska Admin. Code tit. 3, §§ 26.750 to 769
Arizona	Ariz. Rev. Stat. Ann. §§ 20-1233, 20-1241.05(E)
Arkansas	Ark. Code. Ann. § 23-79-112(f)
California	Cal. Ins. Code §§ 10127.10, 10509.6(d)
Colorado	3 Colo. Code Regs. § 702-4 (regulations 4-1-4 (§ 7.A(4)) and 4-1-12 (§ 5.A.3))
Connecticut	Conn. Ins. Dep't Bulletin PF-19 (June 11, 1990)
Delaware	18-1200-1204 Del. Code Regs. § 7.4
Florida	Fla. Stat. Ann. § 626.99(4)(a)
Georgia	Ga. Code Ann. § 33-28-6(a)
Hawaii	Haw. Rev. Stat. § 431:10D-505(a)(4)
Idaho	Idaho Code Ann. § 41-1935; Idaho Admin. Code r. 18.01.41.014(04)
Illinois	215 ILCS 5/226(1)(h)
Indiana	Ind. Code Ann. § 27-1-12.6-5; 760 Ind. Admin. Code § 1-16.1-6(C)(5)
Iowa	Iowa Admin. Code rr. 191-15.9(507B), 191-15.64(507B), 191-16.26(507B)
Kansas	Kan. Admin. Regs. §§ 40-2-15, 40-2-12(f)(4)(A)
Kentucky	Ky. Rev. Stat. Ann. §§ 304.15-040, -050; *id.* § 304.12-030
Louisiana	La. Rev. Stat. Ann. § 22:173(A)(8)(a); La. Admin. Code tit. 37, pt. XIII, § 8911A(5)
Maine	02-031-915 Me. Code R. § 5(A)(3); 02-031-919 Me. Code R. § 5(A)(4)
Maryland	Md. Code Ann. Ins. § 16-105(b)(1)(i); Md. Code Regs. 31.09.05.06(A)(5)
Massachusetts	211 Mass. Code Regs. 34.06
Michigan	Mich. Comp. Laws Ann. § 500.4073
Minnesota	Minn. Stat. Ann. §§ 72A.51(3), 72A.52(2), 61A.57
Mississippi	Miss. Code Ann. §§ 83-7-51, 83-19-1; 28-000-031 Miss. Code R. (regulation 99-2, § 5.A.(4))
Missouri	Mo. Code Regs. Ann. tit. 20, §§ 400-1.010(1)(d), 400-5.400 (7)(d)
Montana	Mont. Admin. R. 6.6.805(a)(b); *id.* 6.6.306(1)(d)
Nebraska	Neb. Rev. Stat. Ann. § 44-502.05; 210 Neb. Admin. Code § 19-009.01D

Nevada	Nev. Rev. Stat. Ann. §§ 688A.165, 686A.010
New Hampshire	N.H. Code Admin. R. Ins. 401.04(f); *id.* 302.06(a)(4)
New Jersey	N.J. Admin. Code § 11:4-2.4
New Mexico	N.M. Code R. §§ 13.9.8, 13.9.10
New York	N.Y. Ins. Code §§ 3209(b)(1), 3219(a)(9), 4226(a)(6)(d); 11 N.Y. Comp. Codes R. & Regs. 51.6(d)
North Carolina	11 N.C. Admin. Code tits. 12.0447, 12.0612(a)(4)
North Dakota	N.D. Cent. Code § 26.1-34-01.1
Ohio	Ohio Admin. Code § 3901-6-05(F)(1)(d)
Oklahoma	36 Okla. Stat. Ann. §§ 4003.1, 4034(G)
Oregon	Or. Admin. R. 836-080-0029(1)(d)
Pennsylvania	31 Pa. Code § 81.6(d)
Rhode Island	R.I. Gen. Laws § 27-4-6.1; 02-030-029 R.I. Code R. § 6(A)(4)
South Carolina	S.C. Code Ann. Regs. 69-39, § 5; *id.* 69-12.1, § 7(D)
South Dakota	S.D. Codified Laws § 58-15-59.1
Tennessee	Tenn. Comp. R & Regs. 0780-1-24.07(4)
Texas	Tex. Ins. Code Ann. § 1114.053(e)
Utah	Utah Code Ann. § 31A-22-423; Utah Admin. Code r. R590-93
Vermont	21-020-010 Vt. Code R. § 5(A)(4)
Virginia	14 Va. Admin. Code § 5-30-51 (A)(4)
Washington	Wash. Admin. Code §§ 284-23-350, -455(4)
West Virginia	W. Va. Code § 33-6-11b; W. Va. Code R. § 114-8-6 (6.1.d)
Wisconsin	Wis. Admin. Code Ins. § 2.15(3), (8)(a); *id.* § 2.07(5)(a)(4)(d)
Wyoming	044-000-012 Wyo. Code R. §§ 7(d), 8(c)(iv)

APPENDIX G

The table below lists state statutes and regulations that address sales of replacement insurance contracts involving FIAs.

State	Statute
Alabama	Ala. Admin. Code r. 482-1-133
Alaska	Alaska Admin. Code tit. 3, §§ 26.790 to 819
Arizona	Ariz. Rev. Stat. Ann. § 20-1241
Arkansas	Ark. Code. Ann. § 23-66-307; Ark. Comm'n Ins. Bull. 6-89
California	Cal. Ins. Code § 10509
Colorado	3 Colo. Code Regs. § 702-4 (regulation 4-1-4)
Delaware	18-1200-1204 Del. Code Regs. § 1204
Florida	Fla. Admin. Code Ann. 69O-151.005 to .008
Georgia	Ga. Comp. R. & Regs. 120-2-24-.03 to .08
Hawaii	Haw. Rev. Stat. Ann. § 431:10D-505(a)(4)
Idaho	Idaho Admin. Code rr. 18.01.41.000 to .018
Illinois	Ill. Admin. Code tit. 50, §§ 917.30 to .80
Indiana	760 Ind. Admin. Code 1-16.1-1 to -16.1-11
Iowa	Iowa Admin. Code r. 191-16.21 to .30
Kansas	Kan. Admin. Regs. § 40-2-12
Kentucky	Ky. Rev. Stat. Ann. § 304.12-030
Louisiana	La. Admin. Code tit. 37, §§ 8901-8925
Maine	02-031-919 Me. Code R. §§ 1 *et seq.*
Maryland	Md. Code Regs. 31.09.05.01 *et seq.*
Massachusetts	Mass. Code Regs. 34.01 to .09
Minnesota	Minn. Stat. Ann. §§ 61A.53 to .60
Mississippi	28-000-031 Miss. Code R. (regulation 99-2, § 1 *et seq.*)
Missouri	Mo. Code Regs. Ann. tit. 20, § 400-5.400
Montana	Mont. Admin. R. 6.6.306
Nebraska	210 Neb. Admin. Code § 19
Nevada	Nev. Admin. Code §§ 686A.510 to .555; Nev. Reg. Admin. reg. no. R109-07; Nev. Ins. Comm'n Bull. 08-007
New Hampshire	N.H. Code Admin. R. Ann. Ins. 302.01 to .09
New Jersey	N.J. Admin. Code §§ 11:4-1 to -58
New Mexico	N.M. Code R. § 13.9.10
New York	N.Y. Ins. Law § 4226(a)(6)(D); N.Y. Comp. Codes R. & Regs. tit. 11, §§ 51.1 to .8
North Carolina	11 N.C. Admin. Code 12.0602 to .0612
Ohio	Ohio Admin. Code 3901:6-05
Oklahoma	Okla. Stat. Ann. tit. 36, §§ 4031-4038
Oregon	Or. Admin. R. 836-080-0001 to -080-0029
Pennsylvania	31 Pa. Code §§ 81.1 to .9

Rhode Island	02-030-029 R.I. Code R.
South Carolina	S.C. Code Ann. Regs. 69-12.1
South Dakota	S.D. Admin. R. 20:06:08:01 to :08:46
Tennessee	Tenn. Comp. R. & Regs. 0780-1-24.01 to .12
Texas	Tex. Ins. Code Ann. § 1114.053
Utah	Utah Admin. Code r. R590-93
Vermont	21-020-010 Vt. Code R.
Virginia	14 Va. Admin. Code § 5-30
Washington	Wash. Admin. Code 284-23-455
West Virginia	W. Va. Code R. §§ 114-8-1 *et seq.*
Wisconsin	Wis. Admin. Code Ins. 2.07(5)(a)(4)(d)
Wyoming	044-000-012 Wyo. Code R. §§ 1-5

APPENDIX H

The table below lists sources of information about state market conduct examinations or examples of state market conduct examination reports.

State	Source
Alabama	*See, e.g.*, 2006 AL Market Conduct LEXIS 5 (Dec. 31, 2006)
Alaska	http://www.dced.state.ak.us/ins/mark_cond_exams.htm
Arizona	http://www.id.state.az.us/exam_prog_presnt_30814.html
Arkansas	2002 AR Market Conduct LEXIS 4 (Dec. 31, 2002)
California	http://www.insurance.ca.gov/0100-consumers/0275-market-conduct/
Colorado	http://www.dora.state.co.us/INSURANCE/mcexam/mcexam.htm
Connecticut	Conn. Ins. Dep't, Market Conduct Div., http://www.ct.gov/cid/cwp/view.asp?Q=254584
Delaware	http://www.delawareinsurance.gov/departments/berg/ExamReports/MarketConductExamReports.shtml
District of Columbia	http://disb.dc.gov/disr/cwp/view,a,1300,q,609801.asp
Florida	http://www.floir.com/lh/is_lh_McExaminationsList.aspx
Georgia	2003 GA Market Conduct LEXIS 1 (Mar. 31, 2003)
Hawaii	Hawaii Rev. Stat. § 431:2D-103
Idaho	Idaho Dep't of Ins., *Annual Report* 18, 21 (2006) (noting the insurance department's market conduct examination function), *available at* http://www.doi.idaho.gov/Pubs/06annrep.pdf
Illinois	Div. of Ins., Ill. Dep't of Fin. & Prof'l Regulation, *71st Annual Report to the Governor* 29 (2005), *available at* http://www.idfpr.com/DOI/Reports/AnnRept/AnnRept2005/arFull.pdf
Indiana	Market Conduct Examination Report of the United American Insurance Co. (Apr. 4, 2006), *available at* 1999 IN Market Conduct LEXIS 2
Iowa	Market Conduct Examination Report of Farmers Mutual Hail Insurance Co. of Iowa (Jan. 14, 2008), *available at* 2006 IA Market Conduct LEXIS 18
Kansas	Kan. Ins. Comm'r Market Conduct Examinations, http://www.ksinsurance.org/consumers/marketconduct.htm
Kentucky	Market Conduct Examination Report of Consolidated Insurance Co. (May 30, 2003), *available at* 2003 KY Market Conduct LEXIS 2
Louisiana	La. Dep't of Ins., Market Conduct Examination Reports, http://www.ldi.louisiana.gov/FinancialSolvency/Market_Conduct/Examination_Reports.htm
Maine	Market Conduct Examination Report of UNUM Life Insurance Co. of America (Feb. 8, 2002), *available at* http://maine.gov/pfr/insurance/company/exam_reports/2001/2001UNUM_MCReport.htm

Maryland	Md. Ins. Admin., Market Conduct Exams, http://www.mdinsurance.state.md.us/sa/jsp/availPubInfo/MarketConductExams.jsp?divisionName=Market+Conduct+Exams&pageName=/sa/jsp/availPubInfo/MarketConductExams.jsp
Massachusetts	Div. of Ins., Office of Consumer Affairs & Bus. Regulation, Market Conduct, http://www.mass.gov/?pageID=ocamodulechunk&L=4&L0=Home&L1=Government&L2=Our+Agencies+and+Divisions&L3=Division+of+Insurance&sid=Eoca&b=terminalcontent&f=doi_MarketConduct&csid=Eoca; *see also* Market Conduct Examination Report on Berkshire Life Insurance Company of America, *available at* http://www.mass.gov/Eoca/docs/doi/Companies/MktCond_Reports/BerkshireLife063006WebRpt.pdf
Michigan	Mich. Admin. Code r. 500.1385 (noting that insurers must maintain copies of advertisements until the next regular report of the insurer); Mich. Comp. Laws Ann. § 500.222
Minnesota	Minn. Dep't of Employment & Econ. Dev., *An Economic Pillar: An Analysis of Minnesota's Insurance Carrier Industry* 15 (2005), *available at* http://www.deed.state.mn.us/facts/PDFs/inscarrier.pdf at 15 (noting insurers' assessment of Minnesota's market conduct exams); Minn. Stat. Ann. § 60A.031
Mississippi	Miss. Ins. Dep't, *Annual Report* 11, 18 (2006), *available at* http://www.mid.state.ms.us/midannualreports/midannualreport06.pdf
Missouri	Mo. Dep't of Ins., Fin. Insts. & Prof'l Registrations, *Study of Missouri's Market Conduct Examination Program with Proposed Recommendations* (2007), *available at* http://www.insurance.mo.gov/Contribute%20Documents/MarketConductStudy-GeneralAssembly.pdf
Montana	*More States Join Centralized Insurer Market Conduct Exam Initiative*, Ins. J, Sept. 30, 2007, http://www.insurancejournal.com/news/national/2007/09/30/83907.htm?print=1 (noting that Montana has joined an NAIC initiative to improve the efficiency of market conduct examinations); Mont. Code Ann. tit. 33, ch. 1-401
Nebraska	0000 NE Market Conduct LEXIS 1(June 30, 2003)
Nevada	Nev. Dep't of Personnel, Specifications for Insurance Examiners, *available at* http://dop.nv.gov/specs/11/pdf/11-407.pdf
New Hampshire	N.H. Code of Admin. R. Ann. Ins. 101.01 to .02, 102.02 to .11, 103.01 to .03, *available at* http://www.gencourt.state.nh.us/rules/ins100.html
New Jersey	N.J. Dep't of Banking & Ins., Market Conduct Examination Reports, http://www.nj.gov/dobi/division_consumers/insurance/marketconductexams.htm
New Mexico	Market Conduct Examination Report of Alliance Life Insurance Co. of North America (June 30, 2004), *available at* 2004 NM Market Conduct LEXIS 1
New York	New York State Insurance Dep't, Circular Letter No. 20 (October 24, 2005), available at http://www.ins.state.ny.us/circltr/2005/cl05_20.htm

North Carolina	Market Conduct Examination Report of United Family Insurance Co. (Oct. 19, 2007), *available at* 2008 NC Market Conduct LEXIS 2
North Dakota	N.D. Ins. Dep't, Market Conduct Reports, http://www.nd.gov/ndins/communications/details.asp?ID=227
Ohio	Ohio Dep't of Ins., Market Conduct, http://www.ins.state.oh.us/AboutODI/ODIDiv/offmarketconduct.htm
Oklahoma	Okla. Ins. Dep't, Market Conduct Exam Reports, http://www.ok.gov/oid/Consumers/Market_Conduct_Exam_Reports/index.html
Oregon	Or. Ins. Div., Insurance Company Examinations, http://www.oregoninsurance.org/company_exams/company_examinations.html
Pennsylvania	Pa. Ins. Dep't, 2007 Market Conduct Exams, http://www.ins.state.pa.us/ins/cwp/view.asp?a=1276&Q=548964&PM=1
Rhode Island	02-030-067 R.I. Code R. §§ 1-14 (prescribing the records insurers must retain for market conduct examinations)
South Carolina	*More States Join Centralized Insurer Market Conduct Exam Initiative*, Ins. J, Sept. 30, 2007, http://www.insurancejournal.com/news/national/2007/09/30/83907.htm?print=1 (noting that South Carolina is part of an NAIC initiative to improve the efficiency of market conduct examinations); S.C. Code Ann. § 38-13
South Dakota	S.D. Codified Laws § 58-33A-11 (noting that insurers must maintain copies of advertisements until the next regular report of the insurer); S.D. Codified Laws § 58-3-1; http://www.insurance.wa.gov/oicfiles/marketconduct/2007mc/MegaReportFinal.pdf at 16 (listing South Dakota as jurisdiction involved in market conduct examination)
Tennessee	0000 TN Market Conduct LEXIS 1 (December 31, 2004)
Texas	Tex. Dep't of Ins., Market Conduct (2006) (PowerPoint presentation at slide 8), *available at* http://www.tdi.state.tx.us/consumer/documents/lhlcc06market.pps#261
Utah	0000 UT Market Conduct LEXIS 1 (December 31, 2003); *see also* http://www.insurance.utah.gov/ContactInfo.html#MC
Vermont	Vt. Dep't of Banking, Ins., Sec., & Health Care Admin., Market Conduct Reports, http://www.bishca.state.vt.us/InsurDiv/market_conduct_exams/a_marketconduct_reports2.htm
Virginia	Bureau of Ins., Va. Corp. Comm'n, http://www.scc.virginia.gov/division/boi/
Washington	Wash. Office of the Ins. Comm'r, Market Conduct Information, http://www.insurance.wa.gov/insurers/market_conduct.shtml
West Virginia	Press Release, W. Va. Office of the Ins. Comm'r, West Virginia Offices of the Insurance Commissioner Completes Market Conduct Examinations (Jan. 14, 2008), *available at* http://www.wv.gov/news/insurance/Pages/WestVirginiaOfficesoftheInsuranceCommissionerCompletesMarketConductExaminations.aspx

Wisconsin	Wis. Office of the Comm'r of Ins., Market Conduct Examination Reports, http://www.oci.wi.gov/markcond.htm
Wyoming	Market Conduct Examination Report of Blue Cross Blue Shield of Wyoming (Feb. 26, 2007), *available at* 2005 WY Market Conduct LEXIS 1 at *18