147 East Second Street
Pomona, California 91766
July 1, 2008

Hon. Christopher Cox, Chairman
Hon. Paul S. Atkins, Commissioner
Hon. Kathleen L. Casey, Commissioner
Ms. Florence E. Harmon, Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5720

re: File No. S7-14-08

Honorable Chairman, Commissioners, and Madam Acting Secretary:

I am responding to the Commission's request for comments regarding the proposed addition of Rule 151A under the Securities Act of 1933 and Rule 12h-7 under the Securities and Exchange Act of 1934 as each relates to "Indexed Annuities and Certain Other Insurance Contracts," products which I believe properly belong under the regulatory scrutiny of the SEC in addition to state insurance or securities regulators. I wish to confine my comments to the subject of marketing practices on the part of insurers and their agents. As a working insurance agent, registered representative and principal (although currently under a Form U5 filing as I begin working in a new agency), and as both a senior instructor for a national insurance and securities prelicensing education provider and a field trainer of new agents, the matters of agent conduct, misrepresentation, and fraud in sales presentations or presales "seminars," as well as Chairman Cox's stated concern for senior purchasers of indexed annuity contracts, are foremost for me.

I have always believed that both equity-indexed annuities and equity-indexed universal life insurance products should be regulated contracts in the same manner as variable annuity and life insurance products. Even though these products are "general account" insurance contracts in which there is no direct "investment" risk to an insured, it is precisely the marketing tactics employed by insurers and agents that use many of the same words and phrases I would use to describe a security such as a mutual fund or variable annuity that should drive the Commission to regulate equity-indexed insurance contracts . . . both annuities *and* life insurance.

In the conduct of my business, I am exceedingly careful to provide clients, prospects, trainees, and students with as much disclosure about the inner workings of insurance contracts as I possibly can, sometimes to the point of excess. Occasionally, the discussion is overwhelming, because I believe this is absolutely necessary, in part, to assist these individuals in understanding that not all insurance products are suitable for all persons. If it sounds confusing when I explain it carefully and completely, then it may be the wrong product for that person. This is especially true for seniors who are unlikely to have the ability to adequately recover, if recovery is even possible, from a financial mistake late in life.

I, like the majority of registered representatives, take the matter of suitability quite seriously and have nothing to fear when it comes to the regulation of these particular contracts. We thoroughly interview to gain an understanding of the client's current financial situation and objectives, then ask questions designed to identify risk tolerance, and only recommend products and services that are in the best interests of the consumer, regardless of our compensation, whether commissions or fee-based.

In these times of financial uncertainty, as we "Baby Boomers" are beginning to enter (or are rapidly nearing) our retirement years, and having observed the volatility of the markets in the past ten years, Baby Boomers, seniors, and others are increasingly concerned with protecting what wealth they have managed to accumulate. Annuities, when properly understood, marketed, and used, are the only financial vehicles – as *part* of a well-crafted, comprehensive financial strategy – that can offer a guaranteed stream of income for life. No 401(k), 403(b), IRA, Roth IRA, Keogh, or SEP can promise that.

Unfortunately, too many agents are unfamiliar with the intricacies of the contracts into which they readily solicit clients, and instead rely solely on the limited product training they receive, without ever reading the contract for themselves or, more importantly, developing a core philosophy of insurance which is, in my opinion, crucial to establishing an ethical relationship with one's clients. And, based on what clients and students have reiterated to me regarding their understanding of the insurance products other agents have marketed to them (or which they have been exposed to in sales training classes), I firmly believe that some companies or insurance marketing organizations employ deliberately deceptive practices, words, and illustrations in their solicitation and sales activities.

Although regulating the products will not, in itself, put an end to such egregious practices, it will at least subject all insurers and agents, and not just registered representatives, to the other aspects of the current regulatory environment, not the least of which is the potential personal liability for customer losses as a consequence of recommending unsuitable products to a client.

Please see the attached copy of an agent's attempt to sell an equity-indexed life insurance contract that one of my students forwarded to me late last year, and note the use of misleading words such as "tax-free income for life" and the incomplete hypothetical illustration that was provided, which is based on a straight line assumption of more than a 9% internal rate of return over most of the life of the contract. Based on the typical 75% participation rate utilized in most indexed contracts, this would require the S&P 500 Composite Index to earn more than a 12% rate of return, which is historically unrealistic. More importantly, however, is the payment of $1,000,000 in premiums over the first five years of the contract. The agent who misrepresented this product would likely earn somewhere between $200,000 and $500,000 in total commissions for the sale, while the contract, as proposed, would probably mean the loss of most or all of the prospect's $1,000,000.

This handmade solicitation would be a violation of existing securities laws if the product were a variable annuity or life insurance contract. The language used is exactly that which might be used to describe a security. Because it was faxed to a prospective client, it may also violate federal wire fraud statutes. The illustration is marked "Agent Use Only," is missing two pages, and should never have been sent to a prospect. It is a potent example of lack of supervision and unregulated marketing misconduct and an excellent argument in favor of the regulation of *all* equity-indexed contracts.

Many of my insurance prelicensing students, who typically have no prior working knowledge of insurance, have already been indoctrinated in the "investment" value of equity-indexed insurance products by their sponsoring organizations. With very little understanding, they speak of a person's ability to "get all of the upside of the market with none of the downside," which is what they've heard from other licensed agents (most of whom are *not* registered representatives) in training classes and during field presentations. Both of those statements are inaccurate and misleading, and in a sales situation are misrepresentations, even if uttered without intent.

The public generally has even less understanding, and the lure of gains without the potential for losses sounds very appealing. Yet, despite the fact that the NAIC's Model Marketing Laws specifically state that insurance products are never to be marketed as investments, it remains customary for many agents to describe annuities and life insurance precisely as investments . . . seriously blurring the bright line between securities and non-securities products. Typical sales dialogue (AKA: script) includes a confusing discussion of taxation and attempts to equivocate premium payments into annuities and life insurance with contributions to qualified plans such as IRAs and 401(k)s. And commonly used hypothetical sales illustrations similar to that which I have submitted show cash accumulations that are, to say the least, wildly exaggerated, if not utterly unattainable.

One insurance marketing organization well known to me does relatively little to encourage its representatives to become securities licensed. Instead, it heavily promotes among its representatives the sale of equity-indexed products precisely because they need only a Life Agent's license, and the commission structure favors their sale over other, more suitable products. To pad their commission checks further, they frequently recommend that clients borrow against the equity in their homes in order to heavily fund a contract. The agents earn a commission on the insurance product, and also on the home equity loan they convince the client to apply for. Given the recent downturn in real estate values, some of those clients may now be over-leveraged and could potentially lose their homes. The agent's commission in an annuity transaction is safe from "foreclosure" as the result of the steep surrender charges found in most contracts.

Another ploy which has become increasingly common here in California is the promotion of "wealth preservation seminars" among seniors in which the presentation focuses on the use of "living trusts" to shelter (AKA: hide) assets from the government – often promoted (improperly) as a way to qualify Medicaid more easily. Seniors are treated to a free lunch or dinner, and many feel they are obligated to return the favor by inviting a "confidential" home visit to discuss their needs "in private."

When the so-called wealth preservation "specialist" shows up at the prospect's home, the "living trust" the client thinks they are obtaining often turns out to be an equity-indexed annuity instead – far from a trust – and the individual is left with surrender charges that I've seen as high as 30% for as many as ten years. All the result of blatant misrepresentation, deception, and fraud. In recent years, California Department of Insurance investigations have uncovered several scams such as these which have stolen millions of dollars from unsuspecting seniors. Penalties under federal securities law would be much more severe.

And, in a highly publicized case this past February, resulting from a market conduct examination covering sales between January 2004 and July 2005, Allianz Life Insurance Company agreed to pay more than $10 million in regulatory penalties and reimbursements to the State of California for its deceptive and abusive marketing of annuities to seniors in California, some of whom were in their 80s. Yet, nowhere in the settlement were there any direct sanctions against agents, such as requiring an agent to personally reimburse a client for the $51,000+ surrender charge incurred when cashing out one annuity to purchase the Allianz product, a remedy that is possible under existing suitability regulations.

The time for the Commission to act, and act swiftly, is at hand. I also believe the Commission would be putting the interests of insurance consumers first if it extended its regulatory oversight of equity-indexed products to life insurance contracts in addition to its proposed regulation of annuities. Because the new regulations are "prospective," their effective date should be established sooner rather than later, since the temptation for some agents and insurers to abuse the public in the waning days of the existing regulatory environment will, no doubt, be great.

Respectfully submitted,

Max H. Herr
California Insurance License # 0596197
FINRA CRD # 2920876

BREAKDOWN OF APPLICATION

NAME [redacted]

MALE AGE _47__ SMOKER

PREMIUM_$200,000 per yr for 5 years = $1,000,000 total

DEATH BENEFIT $3,674,738

AFTER _10 YRS CASH VALUE = $1,491,939

AT AGE ___52___ PREMIUM STOPS (5yrs payment)

AT AGE 60 CASH VALUE approx $1,951,864

PAID IN __$1,000,000

FROM AGE 61 , YOU BORROW approx $ 270,184.00 PER YEAR FROM THE CASH VALUE OF TAX FREE MONEY FOR LIFE , WHILE STILL RETAINING A DEATH BENEFIT. THIS LOAN IS NEVER REPAID. ?

IF YOU DIE AT AGE 90, THERE WILL STILL BE A DEATH BENEFIT OF $ 9,033,410

? if Before?

Indianapolis Life Insurance Company

Vista Lifetime - Issue State: FL

Designed for: [redacted]
Issue Age: 47
Female, Preferred Tobacco

$3,674,738 Selected Face Amount
Initial Annual Premium: $200,000.00
Initial Death Benefit Option: Level

Coverage Summary

Description	Initial Amount	From Age To Age
Initial Base Plan	$3,624,738	47 - Life Insured
Insured Term Life Insurance Rider	$50,000	47 - 100

Assumed Premium Direction

		Non-Guar. Assumed 47+
Basic Interest Strategy:	$21,965.43 Annually	5.00%
1 Yr Fixed Term Strategy:	0% remaining premium	5.00%
5 Yr Fixed Term Strategy:	0% remaining premium	4.25%
Indexed Strategies:		
1 Yr Point to Point (1 Yr PtP):	0% remaining premium	7.95%
1 Yr Monthly Avg Multiple Index (MIS):	0% remaining premium	8.45%
1 Yr Monthly Average (MAS):	100% remaining premium	9.10%
1 Yr Monthly Cap (MCS):	0% remaining premium	7.35%
2 Yr Point to Point (2 Yr PtP):	0% remaining premium	9.00%

See the Non-Guaranteed Assumed Weighted Average Interest Rate section regarding calculation of interest rates.

Contract Premiums

Target Premium $69,015.00
Minimum $32,901.65
7 Pay/MEC $205,602.36

Guideline Single $1,000,000.03
Guideline Level $86,527.51

						Guaranteed at 2% (1)			Non-Guaranteed Assumed (1)		
Policy Year	Att Age	Key	Gross Premium Outlay	Cash from Policy* (BOY)	Net Outlay	Account Value	Net Cash Value	Net Death Benefit	Weighted Average Interest Rate	Net Cash Value	Net Death Benefit
1	48	A	200,000	0	200,000	161,214	38,626	3,674,738	8.63	60,835	3,674,738
2	49	A	200,000	0	200,000	325,273	210,858	3,674,738	8.85	268,266	3,674,738
3	50	A	200,000	0	200,000	492,279	386,036	3,674,738	8.93	493,195	3,674,738
4	51	A	200,000	0	200,000	662,260	564,189	3,674,738	8.98	737,513	3,674,738
5	52	A	200,000	0	200,000	835,454	745,556	3,674,738	9.00	1,003,143	3,674,738

* Cash can only be taken when Net Cash Value is greater than zero and, when taken, will reduce Net Cash Value and Net Death Benefit. Cash illustrated as taken in any Policy Year where Guaranteed Net Cash Value is illustrated as zero relates only to the Non-Guaranteed Assumed column.

(1) Beginning at the end of the 10th year and continuing in all subsequent years, an additional 0.70% of the average month-end Account Values (net of any fixed interest loans) for that year, is guaranteed to be credited to the policy.

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Indianapolis Life Insurance Company

Vista Lifetime - Issue State: FL

Designed for: [redacted]
Issue Age: 47
Female, Preferred Tobacco

$3,674,738 Selected Face Amount
Initial Annual Premium: $200,000.00
Initial Death Benefit Option: Level

						Guaranteed at 2% (1)			Non-Guaranteed Assumed (1)		
Policy Year	Att Age	Key	Gross Premium Outlay	Cash from Policy* (BOY)	Net Outlay	Account Value	Net Cash Value	Net Death Benefit	Weighted Average Interest Rate	Net Cash Value	Net Death Benefit
6	53	A	0	0	0	816,680	734,955	3,674,738	9.10	1,085,226	3,674,738
7	54	A	0	0	0	795,600	722,047	[illegible]	9.10	1,173,423	3,674,738
8	55	A	0	0	0	772,090	706,710	[illegible]	[illegible]	1,268,384	3,674,738
9	56	A	0	0	0	745,960	688,752	[illegible]	[illegible]	1,370,830	3,674,738
10	57	A	0	0	0	722,209	673,174	[illegible]	9.10	1,491,939	3,674,738
			1,000,000	0	1,000,000						
11	58	A	0	0	0	695,674	654,812	3,674,738	9.10	1,631,680	3,674,738
12	59	A	0	0	0	666,339	[illegible]	[illegible]	9.10	1,784,491	3,674,738
13	60	A	0	0	0	633,996	[illegible]	[illegible]	9.10	1,951,864	3,674,738
14	61	AL	0	270,184	−270,184	312,388	[illegible]	[illegible]	9.10	1,849,556	3,388,829
15	62	AL	0	270,184	−270,184	0	[illegible]	0	9.10	1,748,700	3,086,280
16	63	AL	0	270,184	−270,184	[illegible]	[illegible]	0	9.10	1,650,411	2,766,122
17	64	AL	0	270,184	−270,184	[illegible]	[illegible]	0	9.10	1,547,372	2,427,330
18	65	AL	0	270,184	−270,184	[illegible]	0	0	9.10	1,449,409	2,068,821
19	66	AL	0	270,184	−270,184	0	0	0	9.10	1,356,799	1,991,796
20	67	AL	0	270,184	−270,184	[illegible]	0	0	9.10	1,268,950	1,926,976
			1,000,000	1,891,289	[illegible]						
21	68	AL	0	270,184	−270,184	0	0	0	9.10	1,187,336	1,867,149
22	69	AL	0	270,184	−270,184	0	0	0	9.10	1,113,678	1,813,644
23	70	AL	0	270,184	−270,184	0	0	0	9.10	1,049,661	1,767,633
24	71	AL	0	270,184	−270,184	0	0	0	9.10	997,166	1,678,026
25	72	AL	0	270,184	[illegible]	0	0	0	9.10	959,379	1,589,931

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Issue Age: 47
Female, Preferred Tobacco

$3,674,738 Selected Face Amount
Initial Annual Premium: $200,000.00
Initial Death Benefit Option: Level

Policy Year	Att Age	Key	Gross Premium Outlay	Cash from Policy* (BOY)	Net Outlay	Guaranteed at 2% (1) Account Value	Guaranteed at 2% (1) Net Cash Value	Guaranteed at 2% (1) Net Death Benefit	Non-Guaranteed Assumed (1) Weighted Average Interest Rate	Non-Guaranteed Assumed (1) Net Cash Value	Non-Guaranteed Assumed (1) Net Death Benefit
26	73	AL	0	270,184	-270,184	0	0	0	9.10	939,198	1,504,020
27	74	AL	0	270,184	-270,184	0	0	0	9.10	940,141	1,421,269
28	75	AL	0	270,184	-270,184	0	0	0	9.10	966,227	1,342,755
29	76	AL	0	270,184	-270,184	0	0	0	9.10	1,022,237	1,434,964
30	77	AL	0	270,184	-270,184	0	0	0	9.10	1,108,726	1,561,120
			1,000,000	4,593,130	-3,593,130						
31	78	AL	0	270,184	-270,184	0	0	0	9.10	1,229,923	1,725,775
32	79	AL	0	270,184	-270,184	0	[illegible]	0	9.10	1,390,335	1,933,783
33	80	AL	0	270,184	-270,184	0	[illegible]	0	9.10	1,594,963	2,190,521
34	81	AL	0	270,184	-270,184	0	[illegible]	0	9.10	1,849,355	2,501,948
35	82	AL	0	270,184	-270,184	0	[illegible]	0	9.10	2,159,148	2,874,127
36	83	AL	0	270,184	-270,184	[illegible]	[illegible]	0	9.10	2,530,819	3,314,006
37	84	AL	0	270,184	-270,184	[illegible]	[illegible]	0	9.10	2,971,689	3,829,432
38	85	AL	0	270,184	-270,184	[illegible]	0	0	9.10	3,489,530	4,428,735
39	86	AL	0	270,184	-270,184	0	0	0	9.10	4,092,992	5,121,173
40	87	AL	0	270,184	-270,184	[illegible]	0	0	9.10	4,792,121	5,917,485
			1,000,000	7,294,970	-6,2[illegible]						
41	88	AL	0	270,184	-270,184	0	0	0	9.10	5,595,593	6,826,977
42	89	AL	0	270,184	-270,184	0	0	0	9.10	6,514,380	7,861,384
43	90	AL	0	270,184	-270,184	0	0	0	9.10	7,560,371	9,033,410
44	91	AL	0	270,184	-270,184	0	0	0	9.10	8,747,751	10,036,099
45	92	AL	0	270,184	[illegible]	0	0	0	9.10	10,126,286	11,183,443

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