

**MEMORANDUM**

October 6, 2008

To: File No. S7-14-08

From: Justin Daly  
Office of Commissioner Kathleen L. Casey

Re: Indexed Annuities and Certain Other Insurance Contracts  
Release No. 33-8933

On July 24, 2008, Commissioner Kathleen L. Casey and Justin Daly, Counsel to the Commissioner, met with Wendy L. Carlson, Chief Financial Officer and General Counsel, American Equity Investment Life Holding Company, John M. Matovina, Vice Chairman, American Equity Investment Life Holding Company, Kevin R. Wingert, President, American Equity Investment Life Insurance Company, William R. Kunkel of Skadden, Arps, Slate, Meagher & Flom LLP, and Joel G. Oswald, David E. Franasiak, and David A. Starr of Williams & Jensen PLLC. The participants discussed the Commission's proposed Rule 151A.

At the meeting, American Equity Investment provided an 11-page handout titled "American Equity Investment Life Holding Company: Proposed Rule 151A." A copy of the handout is attached.

Attachment



West Des Moines, IA 50266

# American Equity Investment Life Holding Company

## Proposed Rule 151A

## **Fixed Index Annuities = Fixed Annuities**

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- **Fixed Index Annuities (“FIA’s) are fixed annuities.**
- **The 151A release incorrectly equates the purchase of an FIA with an investment in a market index.**
- **The only difference between a traditional declared rate annuity and an FIA is the manner in which annual interest is calculated.**
- **In both cases, full contract value, including premium plus interest credited in all prior years, is exposed to no investment risk.**

# Comparison of Annuities



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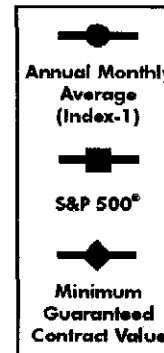
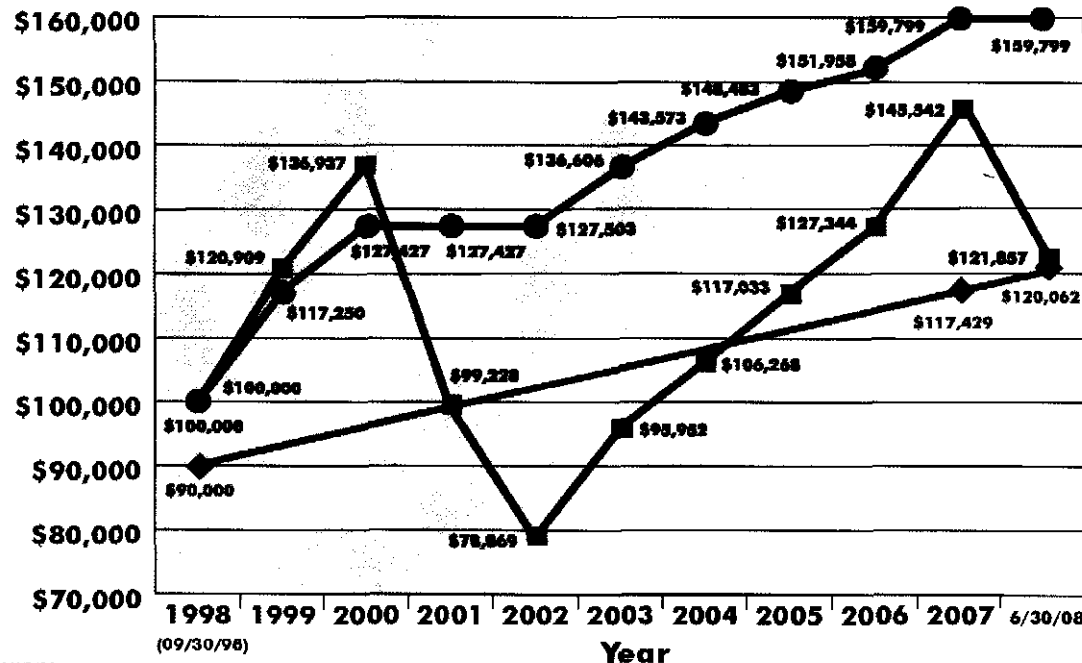
	Declared Rate Annuity	Fixed Index Annuity
Guarantee of premium and minimum interest	✓	✓
Annual interest at rates declared by the insurer	✓	
Annual interest linked to an external index		✓
Tax-deferred growth	✓	✓
No up front sales charges or annual fees	✓	✓
Penalty-free 10% annual withdrawals starting in yr 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	✓	✓

# Understanding FIA Contract Values



## The "REAL BENEFITS" of Indexed Annuities with the Annual Reset Design

A history of American Equity's Index-1\*  
(9/30/98 - 7/17/08)



\*This graph is based on actual credited rates for the period shown on the Index-1 product which is no longer available for sale.

Past performance is not an indication of future results. Please call our Marketing Department for new product information.



8109 07/17/08

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## Marketing/Consumer Demand

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- **The 151A release incorrectly states that FIA's are marketed and purchased primarily for market gains.**
- **FIA's are marketed and purchased primarily for safety of premium.**
- **FIA's offer consumers the opportunity to earn a somewhat higher interest rate than would be paid on a declared rate product.**

## Consumer Investment Risk

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- **The 151A release mistakenly states that an FIA purchaser assumes investment risk comparable to a variable annuity or mutual fund.**
- **FIA investment risk is limited to fluctuations in annual interest.**
- **Many insurance and bank products not regulated as securities have fluctuating levels of annual interest – including e.g. indexed certificates of deposit (prong 1 of 151A).**
- **Many insurance products not regulated as securities provide for “excess value” above guaranteed minimums (prong 2 of 151A).**

# Insurer Investment Risk

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- **Fixed annuity insurers manage their “general account” securities to fund guaranteed FIA contract values.**
- **None of the risk of loss on general account securities is passed through to consumers.**
- **Variable annuities are “separate account” products where all investment experience of securities within the account is passed through to consumers, whether gain or loss.**



# Insurance Regulation of Sales Practices

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- **The 151A release incorrectly states that the main focus of state insurance regulation is insurer financial solvency.**
- **State insurance regulation also covers (with some variation by state):**
  - Annuity disclosure requirements
  - Suitability reviews
  - “Free-look” periods
  - Advertising
  - Unfair trade practices
  - Regulation of “replacements”, or exchanges of annuities
  - Market conduct reviews of insurers
  - Levels of consumer guarantees in annuities/surrender charges
  - Agent licensing and training (specific FIA training in some states)
  - Insurance agent penalties for violations of sales rules

# Complaints/Abusive Sales Practices

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- The 151A release incorrectly states that complaints and abusive FIA sales practices are sharply increasing.
- NAIC complaint data shows fewer complaints regarding FIA's than VA's or other types of annuities.
- NASAA maintains no complaint data.
- The NBC Dateline segment on FIA's featured only one actual consumer.

# Protection of the Elderly

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- **The 151A release incorrectly states that fraud and abuse in sales to the elderly are closely linked to FIA's.**
- **Securities regulation has been no more and no less effective than state insurance regulation in protecting seniors from unscrupulous sales practices in sales of financial products.**
- **State insurance regulators are implementing new and enhanced protections for seniors, just as securities regulators are.**

# American Equity

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- No American Equity policyholder has ever lost a dime of contract value as a result of market volatility.
- American Equity requires the use of clear and concise disclosures in all sales in all states.
- American Equity conducts suitability reviews of all sales in all states.
- American Equity has a complaint ratio of less than 0.2% of all policyholders.
- American Equity trains its agents in suitability and disclosure in FIA sales.