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October 27, 2008

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

Re: File Number S7-14-08; Indexed Annuities
Proposed Rules, Release Nos. 33-8933; 34-58022

Dear Ms. Harmon:

Permit me to express my strong opposition to proposed Rule 151A. I have been a life insurance and annuity industry professional since 1980. As an industry, we help clients, their families obtain safe lifetime incomes, and we pay financial benefits at death. We allow individuals and families to transfer risks, which they cannot prudently bear themselves. Fixed indexed annuities have proven to be an effective long-term accumulation vehicle providing enhanced interest crediting with full protection of principal. Incidental liquidity and lifetime income are also guaranteed by contract.

I acknowledge some abusive sales behavior with our industry. I also point out the active and substantial regulation of agent conduct by the various State insurance regulators. There is NO evidence or belief that the States are unable to continue to regulate this insurance product. This effort by the SEC to expand its jurisdiction is without warrant and insults an industry and all State insurance regulators. Please reconsider your action.

If Rule 151A is adopted, the legal test used to determine the existing exemption under Section 3(a)(8) of the 1933 Act would be dramatically changed. Current judicial interpretations and Commission precedent do not support it. This would not only change the legal status of indexed products but also would create significant uncertainty regarding the securities status of other fixed products, and would potentially heighten litigation and enforcement risks for insurers.

Proposed Rule 151A, by only focusing on the purported investment risk assumed by a contract owner for positive interest, fails to recognize that the strong and meaningful contractual guarantees provided by insurers fundamentally remove any investment risk that an indexed annuity contract owner may have. As such, proposed Rule 151A is inconsistent with judicial precedent and with prior Commission interpretations.

State nonforfeiture laws are the standard guarantee for all individual deferred annuity contracts, whether fixed or indexed, and represent a level of minimum guarantees that state regulators have determined is appropriately in the public interest to protect both the individual consumer from forfeiture and the insured public from insurer insolvency. Further, virtually all indexed annuity insurers provide guarantees in addition to those required by state nonforfeiture laws and in addition to what would be required for an annuity to qualify for the Rule 151 safe harbor. Such guarantees may include a significant cash surrender value guarantee, such as a guarantee that the owner will receive the return of 100% of his or her premiums paid less prior withdrawals at any time while the contract is in force, and a guarantee of minimum crediting rates for a fixed crediting strategy and minimum caps and participation rates for an indexed crediting strategy for the life of the contract. By providing the guarantees, the insurer is obligated to provide the benefits regardless of the performance of the insurer's general account investments that support the guarantees. **This is particularly evident in today's environment where the insurer has assumed all credit risk and default risk in its general account. The contract owner has been insulated from losses associated with equities, mortgage losses, and other credit defaults.**

Proposed Rule 151A is overly broad in scope. Proposed Rule 151A reaches all contracts where the amounts "payable by the issuer under the contract are calculated, in whole or in part, by reference to the performance of a security, including a group or index of securities." This reach may extend proposed Rule 151A's reach beyond indexed annuities (the product the Commission intended to reach by the rule), to include:

- annuities and guaranteed investment contracts with MVA formulae tied to a security (*e.g.,* U.S. Treasuries);
- retail and institutional products where interest is determined by express reference to Treasuries or bond indices;
- discretionary excess interest products insofar as the yield or total return of the general account portfolio is a factor in setting current interest rates; and
- participating policies insofar as dividends payable are derived in part from investment experience. As a result of proposed Rule 151A, serious questions may be raised about the securities status of a great many traditional life insurance and annuity products potentially within the scope of proposed Rule 151A.

Particularly, the Release asks whether proposed Rule 151A should apply to indexed life insurance products. I strongly oppose applying proposed Rule 151A in its current form to indexed life insurance.

The Commission state that Rule 151A may increase competition because of the greater clarity the rule would provide investors and because of the greater ability of investors to make informed decisions. Experience suggests otherwise. In 2005, the National Association of Securities Dealers, Inc. ("NASD") issued Notice to Members 05-

50. The NASD discussed its concerns about the status of indexed annuities under the federal securities laws. Citing such concerns, the NASD encouraged member firms to supervise indexed annuity transactions as though they were securities transactions. The consequences of NTM 05-50 were perhaps both intended and unintended. NTM 05-50 had the intended result of <u>causing certain broker-dealers to restrict their registered representatives' ability to sell indexed annuities</u>. However, NTM 05-50 had perhaps the unintended result of decreasing competition for indexed annuity sales because fewer

firms would sell indexed annuities and consequently fewer prospective purchasers would be offered an indexed annuity.

Proposed Rule 151A effectively would require that all indexed annuities be sold by registered representatives of broker-dealers. This would be represent a dramatic turn of events for the indexed annuity industry. Currently, many if not most indexed annuities are sold by insurance agents who are not registered representatives. Proposed Rule 151A would require such insurance agents to become securities licensed and to associate with a broker-dealer. Becoming licensed will be a time consuming and costly process for an insurance agent. Although insurers may assist agents in becoming licensed, many agents may opt not to sell indexed annuities and instead exclusively sell traditional fixed-rate insurance products. Because selling an indexed annuity would become more difficult under proposed Rule 151A, many insurers for which indexed annuity sales represent a smaller percentage of their total revenues may determine to abandon offering indexed annuities altogether, and as recognized by the Commission, lose revenue. If this were the case, the market for indexed annuities may contract, not expand, and competition may decrease.

The Commission has stated that there is a federal interest in providing investors "with disclosure, antifraud, and sales practice protections" when they are offered indexed annuities which may expose them to securities risk. The Commission fails to recognize the important safeguards under the current state insurance regulatory structure to which indexed annuities are subject.

State insurance regulation is broader and far more comprehensive than just solvency regulation. In most states, there are significant regulations covering the following areas:

- suitability review;
- "free-look" periods;
- annuity disclosure requirements;
- advertising compliance;
- unfair trade practices;
- replacements;
- market conduct review of insurers;
- levels of consumer guarantees in annuities;
- agent licensing and training;
- insurance agent penalties for violations of sales rules;
- non-forfeiture laws;
- guarantee fund laws; and
- policy form requirements.

Those requirements and others apply to fixed annuities, including indexed annuity contracts. Further, states have been on the forefront of investor protection issues as they relate to fixed annuities, including indexed annuities. Many states have adopted National Association of Insurance Commissioners ("NAIC") model regulations that address disclosure, suitability, and replacement issues.

Certainly, the Commission must have larger issues to address today than to attempt to expand its jurisdiction to the State-regulated life insurance and annuity marketplace. Should this indexed annuity issue indeed be worthy of consideration, let the U.S.

Congress debate and legislate the repeal of McCarran-Ferguson Act which today cedes insurance regulation to the individual States.

I hope you will reconsider proposed Rule 151A and withdraw it promptly. Thank you.

Sincerely,

Paul McGillivray, Senior Vice President
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