

August 14, 2008

Fixed indexed annuities are an increasingly popular retirement savings product offered by insurance companies to consumers who are interested in a safe and secure place for their money, especially during times of economic turmoil like we are witnessing today. It is one of the fastest growing product categories offered by insurance companies today and a critical component of many of my clients' financial holdings.

However, the Securities and Exchange Commission (SEC) has suddenly and arbitrarily come out with a rule proposal – known as SEC Rule 151A - that would significantly upset the regulation and offering of these products. In short, SEC Rule 151A attempts to reclassify FIAs as securities and thus subject them to a wide array of cumbersome securities laws and regulations, even though these products have been in the marketplace for over a decade and are closely regulated by state insurance commissioners.

This is an ill-conceived proposal that runs contrary to Congressional intent. It will:

- likely result in significant private sector costs running easily into the tens of millions of dollars
- cause disruption in the marketplace for both agents and consumers
- interfere with ongoing state insurance regulatory efforts
- add little if any protective value for customers

It is deeply troubling that a federal agency could come out with such a far-reaching proposal affecting millions of consumers and agents without providing for adequate justification or rationale.

Here are a few other important points to consider:

- FIAs are well-designed products that give consumers guarantees, flexibility, and tax-deferral – to name a few of their advantages. The recent downturn in the stock market highlights the very strength and value of FIAs. While millions of Americans suffered financial losses, FIA holders have not incurred losses in retirement savings because of the current market turmoil. This is the primary reason that I make these products available to my clients.
- FIA products are heavily regulated by state insurance departments. Through the National Association of Insurance Commissioners (NAIC), state regulators have been working earnestly over many years to come up with appropriate suitability and disclosure requirements for FIA products. To the credit of state insurance regulators, this work continues today and should not be derailed by the SEC's unilateral action.
- Proposed Rule 151A is ill-conceived. Many securities lawyers find the SEC proposal to be completely unsupported by judicial precedents on what constitutes an "annuity" exempt from securities laws. Beyond that, it defies common sense that a product which has virtually no market-related downside risk should be considered a security in the same manner as mutual funds or variable products where investors truly bear risk for market losses, including the possible loss of principal due to market declines..
- The SEC proposal has not been appropriately vetted for comment – and appears to be being rushed to adoption. With virtually no forewarning, the SEC unveiled this proposal on June 25<sup>th</sup> and has allowed for comments only until September 10. This means a proposal with profound effects on the insurance industry could become law within just a couple months even though the general public has had minimal opportunity to evaluate, comment, and possibly offer alternative approaches to address any valid concerns. Fair play demands that a proposal of this magnitude not be rushed or adopted hastily.

Finally, on a personal note, let me add that this is a critical issue for me and my customers. Over many years I have built an insurance business with fixed indexed products having been an important part of my business success. I have played by the rules and have tried to provide my clients with quality products and outstanding service. Now along comes the SEC with this proposal that endangers my business, my livelihood, and my clients' interests. In my view, this is simply unfair and unwarranted, and no federal

agency should be allowed to take such drastic action without the approval or acquiescence of our elected officials.

I am asking for your help in urging the SEC to withdraw this ill-conceived proposal. At a minimum, I ask for your help in urging the SEC to slow down the adoption process so there can be adequate time for review of all implications and ramifications of this proposal. I would appreciate any help you could provide including contacting SEC Chairman Cox, the SEC Commissioners, and Members of the House Financial Services Committee.

I greatly appreciate your attention.

Sincerely yours,

Andrew Sherwood