SEC Chairman Christopher Cox:

On June 25, 2008, the Securities and Exchange Commission (SEC) voted to propose a new rule under the Securities Act of 1933, Rule 151A, which would establish new standards for determining when a Fixed Indexed Annuity (FIA) contract would be required to be registered as a security. The proposed rule would prospectively define certain indexed annuities as not being "annuity contracts" or "optional annuity contracts" under this insurance exemption if:

1. the amounts payable are calculated in whole or in part by reference to a security or a group of securities or an index
2. the amounts payable by the insurer are more likely than not to exceed the amounts guaranteed under the contract ("more-likely-than-not" test).

The National Association of Independent Life Brokerage Agencies, (NAILBA), the principal trade association representing wholesale brokerage of life insurance, strongly objects to the SEC's proposed rule for the following reasons.

The SEC argues that if an annuitant is more likely than not to receive payments in excess of that guaranteed in an FIA, then the majority of the investment risk is borne by the annuitant. The "risk" identified in this definition is that the gain in the contract will be greater than the guarantees but less than some higher number.

The SEC argues that this is "significant investment risk" similar to that in a mutual fund or other security and should therefore by definition make this annuity contract a security. In no way can this be considered the "same risk" investors assume in mutual funds or other securities. The decision to purchase an FIA is frequently rooted in the desire to put money into a guaranteed savings vehicle that is protected from loss. Principal in an FIA is guaranteed and there is a possibility for additional gain, due to changes in the crediting rate. This investment outcome is similar to the initial criteria the SEC cites in constructing this proposed rule. Specifically, the SEC's first criteria in determining a security states; "the amounts payable are calculated in whole or in part by reference to a security or group of securities in an index". NAILBA objects to the idea that simply because the potential interest credit on an FIA is tied in part to a security or index it should be considered a security. Due to the guarantee, the index represents additional value to the consumer above the baseline guarantee. Further, an FIA not only protects the principal value in the contract but also protects any past interest credits within the contract. An FIA is clearly not a security. The SEC's line of thinking flies in the face of judicial precedents on what constitutes an annuity exempt from securities laws.

Ultimately, the SEC approach of using Rule 151A to declare FIAs as securities would have far-reaching consequences by disrupting the distribution of these products. This dramatic change would carry fewer consumer protections at the tremendous cost of limiting competition by compromising customer choice and adding an unnecessary additional regulatory layer to the sale of these popular products.

Compromising Consumer Choice

A foreseeable consequence of the implementation of this rule will be the weakening or elimination of the very guarantees that make FIAs so popular with consumers. If all indexed annuities are securities then there is no longer a requirement that these products protect from loss or provide a guaranteed annuity amount. FIAs with guarantees that are significantly less than they are today will be more prevalent in the market and consumers will truly be exposed.

Decreased Competition

Currently, over 50% of the fixed indexed annuity market is served by licensed insurance professionals who do not hold a securities license. Further, some companies marketing FIAs do not market any securities products and do not have selling agreements with any Broker Dealers. Rule 151A, as proposed, would only allow securities licensed individuals to market FIAs from companies with whom their Broker Dealer have selling agreements—severely limiting the distribution of this product.

As noted, licensed insurance professionals account for over 50% of the sales in this market. Why would the SEC jeopardize their key role for a new system that has not proven effective when selling key financial security products? In fact, a recent LIMRA International, Inc. survey highlights the compliance problems that are limiting consumer access in the securities markets. Citing burdens with compliance regulations, one-third of the 600 independent agents surveyed by LIMRA have dropped their Series 6 license (which the SEC would require as part of this proposed rule to sell FIAs) in the past two years. Why would the SEC want to duplicate these inefficiencies on a new class of products resulting in fewer savings vehicles for consumers?

Additionally, under this rule each FIA would have to be registered and approved by the SEC. Applications, marketing material, disclosures, suitability, and other forms would have to be approved not only by the state insurance departments but by the SEC as well. This adds cost to the distribution of these products. Ultimately the consumer will bear this additional cost.

Consumer Protection

In their proposed rule on FIAs, the SEC cited consumer protections as a key reason behind classifying FIAs as securities. Using supervision, strong suitability requirements, continuing education, and licensing, the states have been very aggressive in their regulatory role to eliminate bad actors. The idea that this is a market run afoul is simply not supported by complaint data filed by consumers. As noted below, the complaint data in this sector of the market has *decreased* since 2005 when the NAIC and carriers worked together to strengthen education and training requirements, licensing qualifications and the suitability standards.

The following information is taken from the March 2008 NAIC Customer Information Source report.

NAIC Filed Complaints	2007	2006	2005
Total (ALL Lines)	204,801	208,138	210,001
Total Annuities/% of Total	2,284/1.12%	2,157/1.04%	1,621/.77%
FIA Specific/% of Total	248/0.12%	231/0.11%	105/0.05%
FIA Sales (in 000s)	$25,100,000	$25,300,000	$27,260,000
% of all annuities (in 000s)	9.7%	10.7%	12.6%

It is clear by this data that a product representing only 10% of all annuities sold (Source: LIMRA) with only 1/10th of a percent of closed complaints has many satisfied customers. While NAILBA would like to see improvement in the complaint rate of less than one for every $100,000,000 of premium, this rate does not support the SEC's claim that there has been a significant growth in abusive sales practices of FIA's. This argument is simply not supported by the data as shown above.

Additionally, even if the final rule does not by its terms encompass life insurance products, there is nothing to stop the SEC from applying the same general analysis that it is using for fixed indexed annuities to other life products. Therefore, the SEC is taking the first step towards opening the possibility that many indexed life insurance products could also be registered as securities with the SEC. Rather than spending time and money trying to stay abreast of which products are registered as securities and which are not, life insurance distributors may very likely avoid distributing any indexed life product, creating less choice for the consume and undermining the entire purpose of life insurance—financial protection.

The SEC Proposal Has Not Been Properly Vetted

The SEC first identified this issue ten years ago but took no action. Now that the market has continued to grow and evolve to the benefit of consumers, the SEC, with little to no forewarning, has unveiled a proposal that would have profound effects on consumers and the insurance industry. Furthermore, this sweeping proposed rule could become law with the comment period ending at the SEC on September 10, 2008. Consumers, agents and insurers have been given only a few months to evaluate and comment on a proposal that will have dramatic effects on this thriving savings market for consumers. Policy of this scope demands a process that considers all perspectives and is not rushed to adoption.

NAILBA is a nonprofit trade association with over 350 member agencies in the U.S. and Canada, representing 100,000 producers who deliver more than one billion dollars in first-year life insurance premiums annually. A normal NAILBA member agency may employ anywhere from 10-30 employees and operate in an average of 31 states. We represent the fastest growing distribution source of life insurance and are expected to deliver close to 80% of the domestic market by 2020. For more information on NAILBA visit our Web site at www.nailba.org