

RE: Opposition to Proposed Rule 151a

September 4, 2008

I oppose the adoption of proposed Rule 151a by the SEC and feel the SEC is exceeding its authority in creating this new rule. Not only does it contain inaccurate information, but lacks factual integrity. More than a decade ago the SEC ruled on this and declared that the FIA was not a security. Follow the “money trail”....Now that billions of dollars are coming out of the stock market and this movement to FIAs is affecting incomes of brokers and securities dealers, the securities dealers via their trade association (FINRA) are inappropriately influencing the SEC to declare FIA products a security as the sales volume is significant. These dealers are seeking to gain control of additional sales volume to increase their revenue. This is clearly not about protection for consumers as those protections are already in place with each state department of insurance.

Come on, SEC, stick to your guns regarding your decade-old decision. A decision which many years ago was based on facts, not pressure and money. The very essence of the FIA has not changed over the years—the FIA holder is NOT in the market nor is he subject to downside risk. FIA purchasers DO NOT assume many of the risks and rewards that investors assume. FIA purchasers assume the benefits and rewards of a Fixed Annuity. Market fluctuations do NOT affect principal value or past interest credits. The product has not changed significantly (except to get better and SAFER).

Please base your determination on Rule 151a on facts and truth, not pressure and money trails. The SEC should abide by their stand regarding FIAs for the following reasons

1. The SEC suggests the Fixed Indexed Annuity (FIA) is purchased for many of the same reasons individuals purchase mutual funds, variable annuities and brokerage accounts. The fact is that an FIA is a fixed product and people purchase the product for many of the same reasons people purchase savings instruments such as CDs or Fixed Annuities.
2. Contrary to SEC claims that FIA purchasers bare the majority of investment risk for fluctuating market performance, the purchaser is NOT directly impacted by market fluctuations. Negative market investment risk fluctuation to the purchaser is eliminated entirely. On the other hand, however, the individual investor who holds stocks and bonds has no place to hide and no protection whatsoever when those holdings go DOWN—it is all risk. Let’s see, which would I choose????

3. The SEC suggests that federally mandated disclosure and sales practices are needed. It is a known fact that suitability regulations in most states and the sale practices required by insurance companies already meet or exceed the federal requirements. Complaint resolution through a department of insurance is much more effective than that provided in securities law. Rather than hiring an attorney and going to court, a consumer working with their local department of insurance receives direct representation at no cost.
4. The SEC suggests that abusive sales practices are fueled by outsized commissions. **INCORRECT!** The complaint rate on FIAs is one complaint for every \$109 million in sales according to the Advantage Compendium. Over the life of any annuity contract, the compensation is actually less than that of an investment advisor who can buy and sell simply to bolster his personal income to the detriment of his client and the client's brokerage account, as evidenced by client statements brought into our office for explanation as to why their funds vanished.
5. The SEC document states there will be increased competition by adopting this rule. This rule will reduce competition and harm consumers. If adopted, only consumers who open brokerage accounts may access an FIA.
6. Costs of creation and administration of the product will increase dramatically and reduce the value for FIA purchasers.
7. This change will cause a negative economic impact well in excess of \$100 million to small agencies within insurance industry. This violates the Small Business Regulatory Enforcement Fairness Act of 1996.

The SEC mentions case law regarding the evaluation of whether an FIA is a security but fails to mention the judges' findings. According to the judge, in *Malone v. Addison Ins. Marketing*, an FIA is NOT A SECURITY. You have said it more than once—AN FIA IS NOT A SECURITY. Stand by your rulings!

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