

September 8, 2008

Secretary, Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Dear Chairman Cox:

I am writing to you to request a 90 day extension of the comment period for the recently proposed SEC Rule 151A.

I am an actuary by training and professional designation. I have spent 13 years working with the fixed indexed annuity (FIA), including designing, modeling pricing, regulatory filing, consulting, creating and delivering agent education and training programs and now directing sales and distribution. I designed some of the first products to market in 1996 while employed by an insurance company which has since become one of the top 3 sellers of FIAs (Fixed Interest Indexed Annuities). My purpose was to augment the value proposition of fixed annuities by expanding the range of potential interest credits via an explicit linkage between a financial index and the credit, while retaining state mandated minimum value guarantees for fixed annuities. Insurance companies hedge for the explicit linkage via a combination of the usual bond investments and indexed options or similar securities. This has historically provided an enhancement of at least 40% more interest. How could this not be a boon to have as an option to American consumer's needs for guaranteed, safe, secure accumulation and guaranteed income needs? My original premise was prescient as fixed annuities containing at least one form of indexed interest represent 30% of total fixed annuity sales in the U.S.

Since then, I have assisted companies with dozens of designs in a consulting capacity and currently am president of Creative Marketing, an independent marketing organization recruiting independent agents on behalf of dozens of insurance companies to sell life insurance and annuities, supporting them with case development consulting, and administrative and marketing services. Creative may be the single largest recruiter in the U.S. of agents selling FIAs as measured by sales (over \$1 billion annualized in 2008, approximately 4.5% market share). We employ 200 people in Overland Park, Kansas.

The potential effect of this proposed rule on our employees and the 15,000 insurance agents we serve and the tens of thousands clients who purchase annuities from them each year is enormous and dramatically understated by the SEC. I foresee the following fallout from this proposal by the SEC to usurp state jurisdiction of fixed indexed annuities and possibly all fixed annuities:

- Conflicting and overlapping regulation, leading to additional cost to the public.

- Control of distribution shared with a generally insurance-hostile broker-dealer system which often presses the public into risk beyond their true tolerance and will add another layer of expense for consumers to bear and quickly reduce sales.
- An overwhelming flood of registered product filings within a very short time period, many with fewer guarantees than today's fixed annuities.
- An overwhelming flood of insurance agents requesting registration as an associated person with a broker-dealer, many of whom will never sell a true security.

The proposed advantages are conjectural, unsupported by hard data and have been apparently bolstered with only selective, half-baked research by the SEC. They are ephemeral, do not stand up to even cursory inspection and do not represent the normally rigorous SEC research to execute its mission of public protection. See page 69, A. Benefits in the proposed Rule 151A.

- Enhanced disclosure – No specifics of what improved disclosure will look like are referenced and it appears the staff is not looking at current disclosures. The commission is attempting to generate a self-fulfilling prophesy: “Indexed insurance does not give securities-like disclosure because they aren't designated as securities. This is bad, because they are really securities which require such disclosure. Therefore, we must make them securities so they can have securities-like disclosure.” The truth is that no insurance has securities-like disclosure because they possess sufficient, time-honored, industry-supported, judicial case law-validated, state-mandated guarantees. In fact, annuities have their own stringent advertising and disclosure regulations administered by the states as required by Congresses' McCarran-Ferguson Act. These regulations are, as I write, being enhanced by the NAIC with cooperation of insurance companies. In any case, *every* sale at the present time is required to have complete, prominent disclosure of the interest crediting methods. What the SEC thinks would be improved is unspecified, to be graced upon the industry by them or FINRA at some later date. What is being requested in proposed by Rule 151A generates a true overlapping and probably irresolvable conflict between state and federal legislation and regulation.
- Sales practice protections – Insurer and agent responsibilities for presiding over a suitable sale of indexed annuities have been addressed by the states through adoption of the Model Suitability in Annuity Transactions Act. Additional work is in progress as well to strengthen supervision of insurance agents and their sales practices. The SEC and FINRA do not have a monopoly on what is a suitable sale in any financial transaction, certainly not insurance transactions, any more than bank transactions or private transactions. In fact, the idea that broker-dealer sales practice protections would improve the practices is unsupported by any statistics

from FINRA or NASAA who say they do not track complaint ratios, leaving them unable to compare against these insurance products which we can demonstrate have exemplary complaint ratios. We, once again, are supposed to accept without question that, of course, since so much more money is siphoned off for the massive securities industry apparatus, that it must provide better protections.

- Regulatory Certainty – This is the very issue we are talking about, not a reason why Federal securities regulation would be superior to State insurance regulation. Such clarity could just as easily be provided in the opposite direction by a rule clarification from the SEC that these products are insurance. It would exclude from securities annuities which link interest to outside indexes as an option, but which in every other facet, meet the requirements of exclusion as a security and market them as insurance. In fact, the industry has been solicitous of and anticipating just that from them for 14 years. Prior to the surprise announcement of Rule 151A, NAFA, the National Association for Fixed Annuities had been solicited by the SEC staff to develop a “decision tree” for determining exclusion. The rubric was well received, would categorize most current versions appropriately as excluded from securities status, and was basically put to bed. Nearly overnight, the SEC issued 151A contrary to the direction of its own staff.
- Enhanced competition – It’s hard to take this allegation of increased benefit to consumers through competition seriously. Even the document says it *may* happen. This is pure wish and hope. Companies have not been waiting on the fences to enter. Actually the very reason 151A has been proposed and FINRA developed Release 05-50 was that sales have reached the point of true significance in financial product sales. Even if some companies were reluctant to enter the market, it would be because of lack of clarity, which could as easily be provided in the direction of insurance status as that of declaring them securities. Broker dealers prior to FINRA Release 05-50 generally had no difficulty with these products since they were categorized as outside sales activities not requiring supervision until FINRA rattled its sword, effectively usurping SEC jurisdiction on the decision and trumpeting: “uncertainty, uncertainty.” What I believe will happen is an *elimination* of competition as the SEC bans longer surrender charge contracts, bonuses, higher commissions. New registered versions will be complicated, unwieldy and inscrutable, with less guarantees and looking less like insurance and more like variable annuities, pushing unsuspecting seniors into more risk. Many of the experts in FIA sales today will be unable or unwilling to secure the securities exams or an association with a broker-dealer. Sales will decline and consumers will be deprived of the only true insurance product which gives them an intermediate risk-reward profile: full insurance interest

credit guarantees in every circumstance and a credit which can (and on the average will) exceed normal insurer bond based credits.

In addition, the proposed rule is so poorly crafted as to possibly sweep *all* fixed annuities for which interest rates can change into its maw. That would include most declared interest rate, non-indexed annuities. This is such a clear overstepping of regulatory authority as to be an impending embarrassment to the SEC, whether intended or inadvertent through poor writing and convoluted logic. In an inexplicable inconsistency, life insurance, with exactly the same indexed interest characteristics would apparently still be treated as insurance.

The SEC staffs' cost estimates of implementation are egregiously low, probably off by at least an order of magnitude.

To my knowledge, the SEC solicited little or no input from the association of insurance commissioners charged with regulating fixed annuities. This vacuum is apparent in the proposed rule.

For all of these reasons and others, the public would not be well served by the SEC forcing interested parties to respond to the proposal in such a limited time. There is no impending crisis or disaster. The state regulators are continuing to evolve insurance regulation. Such a radical shift in regulation in such a short time period will harm consumers in the short, if not the long run. The SEC seems to be operating without many significant facts which should be presented, especially from the insurance side of financial services industry. The federal-state issue is much larger than the SEC anticipates. Deliberate and extensive communication and comment are best in these situations.

Thank you for the opportunity to respond to your proposal with an extension request.

Sincerely,

Michael R. Tripses, Fellow Society of Actuaries, licensed life insurance agent