

Fund Democracy  
Consumer Federation of America

September 10, 2008

FILED ELECTRONICALLY

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

RE: File No. S7-14-08

Dear Ms. Morris:

We are writing on behalf of Fund Democracy and the Consumer Federation of America to express our strong support for the Commission's proposal to regulate equity-indexed annuities as securities under the federal securities laws. As noted by the Commission, complaints about these complex products have increased in recent years, especially with respect to sales to our most vulnerable senior citizens. Unlike state insurance laws, the federal securities laws are designed to address the kinds of abusive sales practices that have plagued the sale of equity-indexed annuities.

The value of equity-indexed annuities fluctuates with the performance of the securities markets, yet the current regulation structure permits their sale by someone with no more knowledge about securities than the customer. As noted by the Financial Planning Association, an evaluation of the suitability of an equity-indexed annuity requires an understanding of a broad array of investment-related factors, including: "the tax-deferred treatment of earnings in the annuity, distribution options and related penalties for early distribution, product liquidity, load costs versus costs and returns for alternative fixed-income products, and sales and early surrender charges."<sup>1</sup> It stands to reason that a product, an understanding of which requires investment-related expertise, is the kind of financial instrument that the federal securities laws were created to regulate.

Indeed, we believe that equity-indexed annuities are precisely the kind of financial products that are likely to be oversold on the basis of their investment characteristics. Equity-indexed annuities often are sold as simultaneously embracing and limiting market risk, as if there were no downside to this approach to participating in the equity markets. However, there is a downside to accepting market risk without receiving all of the return

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<sup>1</sup> Letter from Daniel J. Barry, Director of Government Relations, Financial Planning Association, to Nancy M. Morris, Secretary, Securities and Exchange Commission at 5 (Sep. 10, 2008).

of the market, and this feature is less intuitive to unsophisticated investors. Thus, the equity-indexed annuity offers an attractive feature that is easy to understand (and sell) and an unattractive feature that is more difficult to understand and likely to be overlooked. As a result, the equity-indexed annuity is ideally suited for unscrupulous salespersons who focus only on its strengths and obfuscate its drawbacks. This concern is in addition to fee structures that are higher and more complex than for other products that could accomplish the same financial objectives. Equity-indexed annuities are among the investment products that cry out loudest for sales regulation under the securities laws.

We agree with the Commission that there is “a strong *federal* interest in providing investors with disclosure, antifraud, and sales practice protections when they are purchasing annuities that are likely to expose them to market volatility and risk.”<sup>2</sup> Although state insurance commissioners have extensive experience and expertise in ensuring that issuers will be able to honor guarantee benefits and meet their payout obligations, the same cannot be said as to the oversight of regulation of securities sales practices. Recent interest in annuities sales practices regulation by insurance regulators is insufficient to match the extensive experience that federal regulators have with respect to investment products such as equity-indexed annuities.

We applaud the Commission’s proposal to clarify the status of equity-indexed annuities and ensure that sales of these investment products are subject to a regulatory structure that provides the best fit. Thank you for your consideration of our comments.

Sincerely,

Mercer Bullard  
Founder and President  
Fund Democracy

Barbara Roper  
Director of Investor Protection  
Consumer Federation of America

cc by U.S. Mail:

Honorable Christopher Cox, Chairman  
Honorable Kathleen Casey, Commissioner  
Honorable Elisse Walter, Commissioner  
Honorable Luis Aguilar, Commissioner  
Honorable Troy Paredes, Commissioner

Andrew Donohue, Director, Division of Investment Management

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<sup>2</sup> Indexed Annuities and Certain Other Insurance Contracts, Rel. No. 33-8933, p. 27 (June 25, 2008) (emphasis added).