September 10, 2008

via e-mail to: rule-comments@sec.gov

Ms. Florence E. Harmon, Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File S7-14-08
Release Nos. 33-89334, 34-58022
Indexed Annuities and Certain Other Insurance Contracts

Dear Ms. Harmon:

We are counsel to USA Tax & Insurance Services, Inc. ("USA Tax" or the "Company"), a Florida corporation which is a field marketing organization for insurance products. USA Tax provides independent insurance agents with access to an array of insurance products, including equity indexed annuities, and a business model that the agents implement to provide annuities and insurance to their clients

This letter is submitted on behalf of USA Tax in response to the request for comments by the Securities and Exchange Commission (the "Commission") in its June 25, 2008 proposing release referenced above (the "Proposing Release").

Introductory Matters

As a preliminary matter, the Company strongly disagrees with the Commission's conclusions set forth in the Proposing Release as it relates to whether indexed annuities are securities or are exempt from regulation by the Commission under Section 3(a)(8) of the Securities Act of 1933 (the "Securities Act"). Given the numerous comment letters on the subject which have been submitted to the Commission on these subjects, the Company will not further address them here.

The Company is of the opinion that the Commission has not adequately considered the impact of the proposed Rule 151A on those entities and persons in the middle of the distribution chain for these products, such as field marketing organizations and insurance agents. In particular, the Company believes that the safe harbor provisions of the proposed rule fail to provide adequate certainty and protection to those market participants who are not directly involved with the structuring of the indexed annuity products. Further, the current oversight imposed by state insurance regulators, in the Company's judgment, provides adequate regulation over such market participants to

ensure the protection of consumers. For these reasons, the Company believes that the proposed rule should not be adopted.

If proposed Rule 151A is adopted, however, the Company recommends that the safe harbor provision of the proposed rule should be expanded to automatically include those market participants, such as field marketing organizations and insurance agents, who reasonably rely on the determinations made by the entities or persons that have created the annuity contract ("Sponsors"). It is the Sponsor alone that has the information necessary to ascertain whether such contracts qualify for the safe harbor. Generally the Sponsor is an insurance company or a bank.

The failure to provide non-Sponsoring entities with such relief risks exposing them to substantial liability for determinations relating to the application of proposed Rule 151A, when those determinations are necessarily entirely outside of their control and cannot be independently determined or verified by such market participants.

Background Information

USA Tax is a field marketing organization for insurance products and a SEC-registered investment advisory firm. Among other things, it provides insurance agents ("Agents") with access to a number of insurance products, including equity indexed annuities. Like similar field marketing organizations, USA Tax also provides Agents with a training and education program, marketing materials, client management tools, and back-office support geared toward providing their clients with income tax services, investment advisory services, and annuities and insurance in order to provide income and limit taxation.

By way of background, insurance products like annuities or life insurance policies are generally made available through a hierarchy of marketing organizations ("National Marketing Organizations") and Agents. This hierarchy begins with the insurance companies (Sponsors) themselves, which develop and issue insurance products and with whom the consumer enters into an annuity or insurance contract. Insurance companies have relationships with National Marketing Organizations which, in turn, have relationships with various field marketing organizations ("Field Marketing Organizations"), like USA Tax, as well as with Agents that market insurance products. Field Marketing Organizations have access to Agents who, in turn, sell insurance products directly to consumers. For purposes of this letter, National Marketing Organizations and Field Marketing Organizations are referred to collectively as "Marketing Organizations".

The Company believes that agents generally affiliate with Field Marketing Organizations such as USA Tax because of its business model and related support that it provides and for the benefits of a relationship with a Field Marketing Organization of national scope. Field Marketing Organizations generally do not issue or sell annuity or

insurance products. Nor do they sell insurance products directly to consumers. This is accomplished by the Agents who deal directly with clients.

Field Marketing Organizations like USA Tax typically have a contractual relationship with various National Marketing Organizations for annuity and insurance products that have relationships with several insurance company Sponsors and access to the insurance products that those insurance companies offer. Through these contractual relationships, Agents associated with Field Marketing Organizations become able to sell certain products issued by the insurance companies.

The Field Marketing Organization in turn, contracts with Agents regionally or throughout the United States who provide insurance products to consumers. Under their contracts with the Field Marketing Organization, Agents often obtain an exclusive marketing area in which to use this business model and the related services that the Field Marketing Organization provides. They also may receive the right to use certain registered and common law trade and service marks of the Field Marketing Organization.

The Agents agree to sell insurance products that are within the Field Marketing Organization's "hierarchy," which refers to products that insurance Agents affiliated with the Field Marketing Organization are authorized to sell. These products may include traditional annuities, immediate annuities, equity indexed annuities, multi-year guarantee annuities, life insurance, and long term disability insurance.

Commissions for sales of annuity and insurance products are paid by the insurance company Sponsor, not the consumer. Generally, for annuity and insurance products in the Field Marketing Organization's hierarchy, the Field Marketing organization receives a commission paid by the insurance company (or Sponsor).

The Lack of Certainty Under the Proposed Safe Harbor

The safe harbor provisions of the proposed Rule 151A speak exclusively to determinations that can only be made by the Sponsor of a particular annuity product. The proposed rule does not establish a bright line test for market participants, such as Marketing Organizations and Agents, that, unlike the Sponsor, are not and cannot be actively involved in the development and origination of the annuity product. The failure of the proposed rule to address the needs of Marketing Organizations and Agents exposes these market participants to substantial uncertainty and potential liability based upon circumstances over which they have no control.

The proposed safe harbor protections of Rule 151A require a determination of whether "the amounts payable by the insurance company under a contract would be more likely than not to exceed the amounts guaranteed under the contract." If this is the expected outcome more than 50% of the time, under proposed Rule 151A, the contract would be deemed to be annuity contract exempt from registration pursuant to Section 3(a)(8) of the Securities Act.

As discussed in the Proposing Release, it is anticipated by the Commission that this determination will require an analysis of expected outcomes under various facts and circumstances scenarios. This analysis to be made by the Sponsor, not other market participants, is principles-based and will be conclusive only if it is made prior to the issuance of the contract and:

- the Sponsor's methodology and its economic, actuarial, and other assumptions are reasonable;

- the Sponsor's computations are materially accurate; and

- the determination is made not earlier than six months prior to the date the contract is first offered and not more than three months prior to the date of the contract being issued.

In the Proposing Release, the Commission specifically states that an insurance company should be able to evaluate anticipated outcomes under annuity contracts that it issues. The Commission also identifies assumptions that may be necessary to evaluate such outcomes and states that the reasonableness of such assumptions should be "guided by both history and their own expectations about the future." Further, due to the changing nature of reasonable assumptions, the Sponsor also must re-evaluate the analysis after a period of time (three years). Another condition to the applicability of the Rule 151A safe harbor requires that the computations made by the Sponsor in support of its determination be materially accurate.

The Commission's proposed Rule 151A clearly is centered on and directed at Sponsors and not other market participants in the distribution hierarchy. The information necessary to undertake the required analysis, including the calculations and the development of the reasonable assumptions, are to be based almost entirely on information available to, or generated by, the Sponsor (some of which will likely be proprietary). Further, under the proposed rule, the Sponsor's methodology, and the economic, actuarial and other assumptions used must be reasonable under the specific facts and circumstances.

Because of the subjective nature of determining what is a "reasonable" assumption, as well as the facts and circumstances that may affect a particular set of assumptions, the Company does not believe that Rule 151A provides a sufficient "safe harbor." Compounding this concern, however, is that as a result of the Sponsor-oriented analysis of information available only to it, all non-affiliated Marketing Organizations and Agents, by necessity, will be subject to and will need to rely on determinations that are made outside of their control and that they can not objectively evaluate. This places the Marketing Organizations and Agents in the unfair position of bearing the burden under the Securities Act of proving that the exemption from registration under Section 3(a)(8) applies to the annuity products that they are selling based on an analysis that can

only be undertaken by the Sponsor and for which there would be no meaningful way for such Marketing Organizations or Agents to independently evaluate.

The Failure to Verify the Applicability of the Safe Harbor Could Subject Distributors to Substantial Liabilities

In the Company's view, the potential impact of the failure to fit within safe harbor provision of proposed Rule 151A will likely be substantial. If, notwithstanding a Sponsor's determination that a particular annuity satisfies the safe harbor, a regulator or private litigant takes a different view, the Marketing Organizations and Agent may be asserted to be responsible for:

- The sale of unregistered securities in violation of Section 5 of the Securities Act, which may give rise to a private right of action under Section 12 of the Securities Act;

- The failure to be registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act") in connection with the sale of the indexed annuity products;

- Alleged violations of state blue-sky laws based on the alleged sale of a security by an unregistered broker-dealer; and

- Private civil actions based on state blue sky law, which often afford a rescissionary remedy and a right to statutory interest and prevailing party attorneys' fees.

These potential liabilities may well be significant. More troublingly from the Company's perspective, they depend on inherently vague and case-specific determinations. Questions such as whether a particular product satisfies the Howey test, whether a product is entitled to a Section 3(a)(8) exemption under VALIC,[1] or whether a Marketing Organization or Agent was engaged in the business of effecting transactions in securities for the account of others are almost always facts and circumstances dependent. The question of whether the safe harbor itself applies is equally subject to interpretation under the facts of any given case. The vagaries of these determinations necessarily create an incentive for counsel to pursue such claims, and subject the Marketing Organization to the virtual certainty of protracted and expensive litigation to defend it.

To exacerbate the problem, there appears to be no meaningful way for such Marketing Organizations and Agents adequately to shield themselves from potential liability for erroneous conclusions of the Sponsor. Based on previous pronouncements and disclosure regulations adopted by the Commission, the Commission has clearly articulated its position that indemnification for liabilities arising under the Securities Act

[1] SEC v. Variable Annuity Life Ins. Co., 359 U.S. 65 (1959).

is against public policy as expressed in the Securities Act and is unenforceable. Further, even if such indemnification was available, it is unlikely that the Marketing Organizations or Agents would have sufficient economic or bargaining power to compel the Sponsor to provide any such protections.

Marketing Organizations and Agents Reasonably Relying on a Sponsor's Representations Should be Automatically Granted the Protections of the Safe Harbor Afforded by Proposed Rule 151A.

The Company believes that it is unnecessary to subject Marketing Organizations and Agents to the registration requirements of the Securities Act for annuity products sold in reasonable reliance on the determinations made by the Sponsor.

The offer and sale of annuity products under Section 3(a)(8) of the Securities Act in compliance with proposed Rule 151A would be appropriately regulated at the Sponsor-level of the distribution hierarchy where the product is developed, created, and actually sold. Assuming receipt of reasonable representations of the Sponsor as to the availability of the safe harbor afforded by Rule 151A, Marketing Organizations and Agents should not bear the risk of an incorrect determination made by the Sponsor. Investors would seek their redress from the Sponsor under the applicable securities laws.

The Company believes that the Commission's stated concerns and objectives, as it relates to the activities of the Marketing Organizations and Agents, with respect to the sale of such annuity products, are being met by the insurance and banking regulators of the various states. Marketing Organizations and Agents selling annuity products made available from a Sponsor will continue to be regulated by such state insurance or banking commissions and such oversight with respect to the sales of annuities has been significant. The insurance commissioners have taken steps to increase its regulation of sales procedures and techniques used in the offer and sale of indexed annuities. In its letter to the Commission dated August 14, 2008, the National Association of Insurance Commissioners (the "NAIC") described the efforts taken by NAIC members over the past two years to increase such oversight with respect to the sale of indexed securities and efforts to revise industry standards with respect to such sales efforts. Further, state insurance regulation has been evolving and state insurance regulators have established rules and regulations (subject to variations of specific states) relating to, among other things, specific disclosure requirements relating to sales of annuities, advertising, suitability considerations, agent licensing and training, unfair trade practices, and insurance agent penalties for failure to comply with sales rules. Accordingly, Marketing Organizations and Agents are adequately supervised and regulated in connection with sales of such annuity products to consumers.

Further, if Rule 151A is applicable to all market participants in the sale of annuities, as compared to its applicability only to the Sponsors, there are some serious practical concerns relating to the ability of the Commission to adequately supervise the large number of Marketing Organizations and Agents that would become subject to the

rules and regulations of the Commission. The larger influx of Agents registering as brokers would result in a significant increase of registered brokers who primarily would be selling just annuity products. The Commission would unlikely have the necessary resources to monitor all of the various Marketing Organizations and Agents that may be involved in the sale of indexed annuities (including those that are eventually determined to be covered by the safe harbor). The inability to sufficiently monitor all of the market participants could cause significant compliance issues and would likely create certain competitive pressures whereby certain market participants who are willing to risk possible noncompliance in order to generate sales. Those Marketing Organizations and Agents taking a conservative approach to compliance likely would lose sales to those who are willing to run the risk of noncompliance. This result would be precisely the opposite result intended by the Commission's proposed rule which is seeking accountability.

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Based on the foregoing, the Company urges the Commission to reconsider adoption of Rule 151A. If, however, the Commission should determine to adopt Rule 151A, the Company requests the Commission to consider its application to non-Sponsor entities and Agents that are involved in the distribution hierarchy. More particularly, the Company suggests that Marketing Organizations and Agents which are not affiliates of a Sponsor, and who reasonably rely on a Sponsor's determination under Rule 151A, be granted safe harbor protection so long as such entities are subject to regulatory oversight by state insurance or banking regulators.

The Company appreciates the opportunity to comment on the Proposing Release and respectfully request that the Commission consider the recommendations and comments set forth above.

Respectfully submitted,

/s/ Richard A. Denmon
Richard A. Denmon