LSW

Wade H. Mayo
President and CEO

September 10, 2008

VIA ELECTRONIC DELIVERY

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

RE: Comments on Proposed Rule 151A
Indexed Annuities and Certain Other Insurance Contracts
File Number S7-14-08; Release No. 33-8933

Dear Ms. Harmon:

This letter is submitted on behalf of Life Insurance Company of the Southwest ("LSW"), a Texas domiciled insurer and a member of the National Life Group. LSW is concurrently submitting comments to the Securities and Exchange Commission (the "Commission" or "SEC") with regard to Release No. 33-8933 ("Proposed Release")[1] in connection with the Coalition of Indexed Annuity Companies ("Coalition"), such comment letter being hereby incorporated by reference and made a part hereof. The purpose of this comment letter is to further amplify the comments that were made in the Coalition's comment letter. Please note we are a member of other industry organizations which may file comment letters including but not limited to the Committee of Annuity Insurers and the American Council of Life Insurers. These other industry comment letters are a result of a negotiated consensus of several parties and to the extent that such statements in those comment letters are perceived to conflict with statements made herein, the positions stated in this comment letter and the letter of the Coalition control for purposes of stating the position of LSW.

LSW is one of the original companies issuing fixed indexed annuities ("FIA's") and started the issuance in 1996. While the SEC seems to believe only senior savers are interested in FIA's, please note a significant focus of our FIA marketing efforts have been in the 403(b) school teacher market (i.e. 60% in 2007 of our total business), a group of particular risk adverse savers. FIA's meet a savings need across all groups who have the desire for a product with significant guarantees. LSW's sales of FIA products are made to a broad array of individuals – from age 20's to 80's. Out of 142,000 FIA policies currently in force and issued by LSW, the average issue age of a LSW policyholder is 45.59 years. LSW issues more policies as flexible premium

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[1] Indexed Annuities and Certain Other Insurance Contracts, Rel. No. 33-8933, 34-58022 (June 25, 2008), File No. S7-14-08

annuities with ongoing premiums paid than single premium policies. LSW's sales include both qualified and nonqualified FIA's, and as such, there is no particular emphasis on the senior market. To cure what the SEC perceives as sales abuses in the senior market may result in the Commission eliminating a product offering which is being used successfully across all saving needs by a diverse background of individuals. To create a rule so focused on one segment of the market, the senior market, is clearly myopic and actually harmful to the goal of promoting long term savings for retirement by all citizens.

As noted in the Proposed Release, Section 3(a)(8) of the Securities Act provides an exemption for any annuity contract or optional annuity contract that is subject to the supervision of the insurance commissioner, bank commissioner, or similar state regulatory authority. The United States Supreme Court has further elaborated on the exemption in the VALIC and United Benefit cases. [2] The two prong test developed in those cases looks to: (1) the allocation of investment risk between the insurer and the purchaser; and (2) the marketing of the product to determine if such product is an annuity. The investment products involved in these cases were generally variable annuities and, as such, were determined not to be annuities under federal securities laws.

In 1997, the Commission issued a Securities Act Release[3] requesting comments on product design and marketing of equity indexed annuities. LSW responded to that release. From 1997 forward, we and other insurers who issue fixed index annuities have sought guidance from the SEC with regard to a bright line test as to the many items associated with appropriate marketing, i.e. marketing processes, disclosures, etc. for fixed index annuities. We expected, of course, for this guidance to be within the framework of the Commission's authority and previously stated positions regarding the definition of annuities. Throughout that period, we have received no response from the SEC.

We find it quite odd that now, eleven (11) years after the Commission's first inquiry, the SEC has decided to propose "a new definition of 'annuity contract'"[4] which does not interpret and give guidance within the Commission's existing framework of determining an annuity, but in fact, adopts entirely new and arbitrary standards that bear little relation to existing rules and case law on the subject. In that sense, the Proposed Release is quite dismaying in that there seems to have been no government to industry dialogue as to a proper and efficient manner to reach reasonable goals. Rather, it appears the Proposed Rule 151A was made in a vacuum without input from knowledgeable FIA experts.

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2 S.E.C. v. Variable Annuity Life Ins. Co., 359 U.S. 65 (1959) ("VALIC"); S.E.C. v. United Benefit Life Ins. Co., 387 U.S. 202 (1967) ("United Benefit").

3 Securities Act Release No. 7438 (Aug. 20, 1997) [62 FR 45359 (Aug. 27, 1997)]

4 Proposed Release at 37753.

We not only believe the SEC has exceeded its authority in promulgating Rule 151A but also suggest Rule 151A does not directly address the SEC's stated federal interest "in providing investors with disclosure, antifraud, and sales practice protections"[5] nor the issues of "abusive sales practices."[6] In our opinion, the SEC has always had the authority to pursue enforcement actions against those parties marketing a FIA in the manner of a security (instead of an annuity). Instead the Commission has chosen to ignore that authority and to "punt" this issue to FINRA, a party without insurance or annuity expertise. We believe there are real and significant issues that need to be addressed with regard to how and to whom fixed indexed annuities are marketed. The SEC can and should give strong guidance in this matter consistent with its administrative authority to make such regulation. However, it should do so in a way that enhances protection for the savings public while retaining the existing delivering mechanism for FIA products.

In proposing Rule 151A, we believe the SEC has clearly underestimated both the costs of compliance and the effects it will have on small businesses, competition, and the ultimate purchaser (saver). Costs of compliance will skyrocket as agents incur the costs of security licenses and companies have to modify their internal workings including developing new products for purposes of S-1 filings. Further, companies will not only have to acquire broker/dealers, but will have to implement a very broad field supervisory structure with the significant costs associated therewith. This structure will have to accommodate the many hundreds of thousands of individual agents who can not be part of networking relationships. These additional costs will be borne by policyholders and will only reduce their ability to meet their savings goals without taking the investment risks they seek to avoid.

The delivery of these products will be severely hampered by the proposed rule. Not only will many agents choose not to gain licensing, but many who otherwise would choose to do so, **will not be able to affiliate with broker/dealers due to an agent's remote location. Small town and rural America will be underserved due to the distribution concentration bias that a FINRA field supervisory model requires.**

To put FIA's within FINRA's jurisdiction, Rule 151A uses an arbitrary and somewhat bizarre analytic construct which equates the probability of receiving more than that guaranteed to a "risk" that a purchaser must be protected against. The comments to the proposed rule state the analysis the SEC proposes is one that is commonly used by companies. Nothing could be farther from the truth. Companies design FIA's to deliver indexed interest with a high degree of probability – not a low degree. Using the approach the SEC proposes, could result in the SEC being faced with the prospect of companies whose policy designs skirt the new rules, continuing sales practices which the SEC thinks are the root of the problem.

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5 Id. at 37752.
6 Id. at 37753.

Rather than use the pretext of a non-existing "investment risk" as a way to accomplish the SEC's goals, we believe the better approach to solving the suitability problem that seems to be the SEC's focus is for the SEC to directly comment on same. We believe the SEC should further define the Rule 151 Safe Harbor as to extending only to those FIA products the sales for which meet announced sales suitability standards. These standards should harmonize the many state mandated requirements and might include the topics of disclosures, suitability review, advertising and more.[7]

By addressing the marketing issue directly, we believe a solution can be reached within the SEC's purview that meets the needs of the entire savings public while preserving access to a product class that meets the needs of so many risk adverse savers.

For all the reasons set forth above, LSW respectfully requests that the Commission decline to adopt Proposed Rule 151A, and instead affirm that fixed indexed annuities are annuities, not securities.

Respectfully submitted,

LIFE INSURANCE COMPANY OF THE SOUTHWEST

By: _____
Wade H. Mayo, President and CEO

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[7] Of particular note is the ongoing effort by the industry to propose a draft of such standards to the SEC. But, due to the failure of the Commission to grant any extensions to the comment period on this proposed rule, there was not time for industry associations to draft and reach a consensus on such standards to be proposed.