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Via e-mail (rules-comments@sec.gov)

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-14-08 – Indexed Annuities and
Certain Other Insurance Contracts

Dear Sir or Madam:

We represent the American Bankers Insurance Association (ABIA), which is the insurance affiliate of the American Bankers Association. Members of the ABIA include banking institutions of all asset sizes, insurance companies, service providers, consultants, mortgage companies, credit card companies and associations. ABIA is concerned that the referenced rule proposed by the Securities and Exchange Commission (SEC) would significantly change the regulatory landscape for banks offering indexed annuity products and fails to recognize the actual terms of the products and the fact that there are state insurance regulations that require disclosures and provide sales practice protections for the sale of indexed annuities.

Equity-indexed annuities are safe and reliable products for annuitants that are analogous to traditional fixed annuities, with the same or similar guaranteed minimum interest rates and non-forfeiture clauses. The major technical distinction between fixed annuities and indexed annuities is the manner in which interest is credited to an annuitant. Holders of indexed annuities are not typically exposed to any potential loss due to market volatility or downturn, nor is there typically any downside investment risk. Though there may be surrender charges associated with indexed annuities, they are similar to those that apply to traditional fixed annuities and certificates of deposits. The position in the proposed rule that a potential fluctuation in an annuitant's annual profit somehow shifts investment risk to an annuitant is without basis in fact or SEC precedent and is a departure from the manner in which other annuity products are treated.

According to the SEC, as stated in the preamble to the proposed regulation, "most purchasers of indexed annuities have not received the benefits of federally mandated disclosure and sales practice protections. These include claims that the often-complex features of these annuities have not been *adequately disclosed* to purchasers, as well as claims that rapid sales growth has been fueled by the payment of outsize commissions that are funded by high surrender charges imposed over long periods, which can make these annuities particularly *unsuitable* for seniors and others who may need ready access to their assets." (emphases added) In other words, it appears that the SEC's primary concerns are that consumers receive appropriate disclosures, and that the product be suitable, especially for seniors. We believe that both of these issues are already being addressed through state regulation of the business of insurance through laws and regulations adopted by the states based, wholly or in part, upon model laws and model regulations developed by the National Association of Insurance Commissioners (NAIC).

The NAIC has developed models that apply to annuities, including indexed annuities, related to suitability and disclosures. One model recently adopted by the NAIC, the Suitability in Annuity Transactions Model Regulation (No. 275-1), establishes procedures that insurance producers must follow before making a recommendation that results in the purchase or exchange of an annuity product. The procedure is designed to help ensure that the consumer's insurance needs and financial objectives are appropriately addressed when the recommendation is made, *i.e.*, that the product is suitable for the consumer.

According to the model, before an annuity resulting from a recommendation is purchased or exchanged, an insurance producer (or an insurer where no producer is involved) is required to make reasonable efforts to obtain the following information about the consumer:

- The consumer's financial status;
- The consumer's tax status;
- The consumer's investment objectives; and
- Such other information used or considered to be "reasonable" by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

The NAIC also has issued the Annuity Disclosure Model Regulation (No. 245-1). That model requires a producer to provide a consumer with both a Disclosure Document and Buyer's Guide when offering annuities.

In addition to certain generic information, the Disclosure Statement must contain the following information:

- A description of the annuity contract and its benefits, emphasizing its long-term nature, including the following examples where appropriate:

- The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;
- An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
- Periodic income options, both on a guaranteed and non-guaranteed basis; and
- Any value reductions caused by withdrawals from or surrender of the contract.

The model regulation also includes a Buyer's Guide specifically designed for Indexed-Annuities, which must be provided to the consumer. The Buyer's Guide addresses the following questions:

- What are indexed annuities?
- How are they different from other fixed annuities?
- What are the contract features of indexed annuities? The topics addressed in the answers to be provided include, for example, the indexing method that is used; the contract term; participation rate; averaging; interest compounding; margin/spread/administrative fee; and vesting.
- How do the common indexing methods differ?
- What are some of the features and trade-offs of different indexing methods?
- How do I know if an equity-indexed annuity is right for me?

The NAIC also has adopted the Life Insurance and Annuities Replacement Model Regulation (No. 613-1). For replacement of life insurance or an annuity, the model requires an insurance producer to read to the customer a detailed notice regarding what a replacement is, so that the customer fully understands the nature of the proposed transaction.

We recognize that not all states have adopted these models, but we believe it is important for the SEC to consider what the states are doing to address disclosures and suitability in the context of annuities in general and indexed annuities in particular.

Additionally, ABIA is concerned that the proposal would have a significant impact on how indexed annuities are marketed. Many indexed annuities are marketed to the middle market by insurance producers, including those affiliated with banks. If those producers have to be registered solely to offer an indexed annuity, we question whether many producers would continue to offer the products. The costs of having to register and train these employees as registered representatives in order to accommodate the requirements of the proposed rules would be significant and burdensome.

This proposed rule is unnecessary and is burdensome because the sale of indexed annuities is already being regulated by state insurance regulators. In addition, there is no law to which the SEC can refer that invests the SEC with exclusive regulatory authority over these products. Accordingly, the proposed rule would duplicate requirements already in place at the state level – mandating two regulatory systems, not one – by adding new federal regulatory requirements without benefiting consumers.

In conclusion, it is important for the SEC to consider the current status of state regulation of indexed annuities, particularly with respect to disclosures and suitability. Insurance producers offering indexed annuities already have to satisfy several state regulatory requirements, and ABIA questions the consumer benefit of requiring a licensed insurance producer also to register to offer the product.

Sincerely,

James McIntyre

James T. McIntyre