



September 10, 2008

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: File No. S7-14-08 (Indexed Annuities)

Dear Ms. Harmon:

NAVA, Inc., the Association for Insured Retirement Solutions, respectfully submits this letter of comment on the Commission's proposed new rules that would define the terms "annuity contract" and "optional annuity contract" under the Securities Act of 1933 (the "Securities Act"), and exempt insurance companies from filing reports under the Securities Exchange Act of 1934 (the "Exchange Act") under certain circumstances, published by the Securities and Exchange Commission ("SEC") on June 25, 2008.¹

NAVA is a not-for-profit organization dedicated to the growth and understanding of annuity and variable life insurance products. NAVA represents all segments of the annuity and variable life industry with over 300 member organizations, including insurance companies, banks, investment management firms, distribution firms, and industry service providers.

A. Summary of the Proposal

The Commission has proposed a new rule 151A ("Rule 151A") that would define the terms "annuity contract" and "optional annuity contract" under the Securities Act. The stated purpose of Rule 151A is to clarify the status under the Federal securities laws of indexed annuities.

Rule 151A would define certain annuity contracts as not being an "annuity contract" or "optional annuity contract" under the exclusion contained in Section 3(a)(8) of the Securities Act, if (i) the amounts payable by the issuer under the contract are calculated in

¹ *Indexed Annuities and Other Insurance Contracts*, Securities Act Release No. 8933 (June 25, 2008) (the "Release").

whole or in part by reference to the performance of a security, including a group or index of securities; and (ii) amounts payable by the issuer under the contract are more likely than not to exceed the amounts guaranteed under the contract.

Rule 151A would be applied prospectively to indexed annuities that are issued on or after the effective date of the final rule. The Release also proposes that the effective date of any final rule would be a date that is 12 months after publication in the Federal Register.

In addition, the Commission has proposed new rule 12h-7 under the Exchange Act (“Rule 12h-7”), which would provide conditional relief from the periodic reporting requirements of the Exchange Act for insurance companies issuing indexed annuities and certain other securities that are registered under the Securities Act and regulated as insurance under state law.

B. Comments on Rule 151A

As stated above, NAVA’s members represent all segments of the annuity industry, including both insurers and distributors. The product mix of the companies is diverse. Some of our insurer members issue predominantly or only variable annuities, or variable and traditional fixed annuities, some issue indexed annuities, and some issue all three. The same diverse mix of products applies as well to NAVA’s distributor members.

To date, given the short comment period, the timing of the Release’s publication over the summer, and the diverse product mix of our members, NAVA has not been able to reach a clear consensus position on Rule 151A. As a result, NAVA is not taking a position on the proposal at this time. If an extension of the comment period is granted, as has been requested by NAVA and many other groups, NAVA will continue to work to forge a consensus with a view to filing additional comments.

In the meantime, anticipating that the Commission may determine not to extend the comment period for Rule 151A, we offer the following technical comments on Rule 151A, subject to any additional comments that we may be permitted to submit:

1. Proposed Definition

We believe strongly that the definition contained in Rule 151A is overly broad and could, contrary to its purpose, potentially be interpreted to apply to other types of annuities and life insurance products.

As proposed, Rule 151A would exclude from Section 3(a)(8) annuities where “the amounts payable by the issuer under the contract are calculated in whole or in part by reference to the performance of a security, including a group or index of securities.” As explained in the Release, “[t]he rule would apply whenever any amounts payable under

the contract under any circumstances... are calculated, in whole or in part, by reference to the performance of a security or securities.”

The broad language of Rule 151A could be interpreted to apply to insurance company general account products such as fixed annuities with market value adjustment features (“MVA contracts”) that are tied to Treasury security rates, as well as declared rate fixed annuities where excess interest is determined by reference to the performance of the general account. General account assets typically consist in large part of securities, so amounts payable on these products could be interpreted as being calculated, in whole or in part, by reference to the performance of a security or group of securities.

These and other types of general account products have traditionally and universally been viewed as insurance, not securities requiring registration under the Securities Act. Indeed, if these general account products are deemed to be registerable securities, then the exemption contained in Section 3(a)(8) of the Securities Act would appear to be meaningless. If the Commission decides to proceed to adopt any rule that would define the scope of annuities that are not entitled to the Section 3(a)(8) exemption, we recommend that it be revised to include a provision that expressly states that the Rule does *not* apply to any annuity or life insurance contract that traditionally has been deemed to fall within the exclusion of Section 3(a)(8) of the Securities Act and/or the “safe harbor” from registration set out in Rule 151 under the Securities Act.

2. Prospective Application

The Commission issued a concept release on indexed insurance products in 1997 and invited comment.² Thereafter, the Commission took no further formal action on this subject and, as the Release notes, in the absence of a definitive interpretation by the Commission, most indexed annuity issuers relied on the state of the law as it then existed and determined that registration of indexed annuity contracts was not required. We strongly agree with the Commission’s position that under these circumstances insurance companies should not be subject to any additional legal risk relating to their past offers and sales of indexed annuity contracts.

3. Compliance Date

Should the Commission determine to adopt Rule 151A as proposed, we submit that a longer phase-in period is warranted and would suggest that the compliance date of the Rule not be earlier than 18 months after publication in the Federal Register.

As the Commission acknowledges in the Release, Rule 151A, if adopted, will have significant effects on both the indexed annuity issuers and distributors. Issuers will be

² See *Equity Index Insurance Products*, Securities Act Release No. 7438 (Aug. 20, 1997).

required to prepare and file registration statements for the contracts that do not meet the definition, as well as contract prospectuses. In addition, indexed annuities that are registered as securities will have to be distributed only through registered broker-dealers. Current distributors that are not registered as broker-dealers or parties to a networking arrangement with a registered broker-dealer will have to either become registered, or enter into a networking arrangement. These actions will likely necessitate significant and time consuming structural and operational changes.

4. *Form N-4*

The Release requests comment on whether the Commission should permit insurance companies to register indexed annuities, as well as any other annuities that are securities, on Form N-4. Should the Commission determine to adopt Rule 151A as proposed, we would support the use of Form N-4 to accomplish such registration, as appropriate, under the Securities Act only. Although Form N-4 was designed for variable annuities, it generally elicits disclosure of information of the type that an annuity investor may consider important in making an investment decision, such as information about fees and charges, annuity benefits, death benefits, purchase and redemption rights, and the like. Form N-4, therefore, would provide a ready framework for refining existing and/or developing any additional disclosure items more suited to such annuity contracts. Further, the use of Form N-4 would accommodate the elimination of Exchange Act reporting obligations pursuant to Rule 12h-7, discussed below, since Form N-4 separate account registrants currently are not subject to Exchange Act reporting of the type required of non-investment company issuers, and investors and insurance companies are already familiar with the financial statement disclosures required by Form N-4.

C. Comments on Proposed Rule 12h-7

Regardless of Commission action on Rule 151A, NAVA supports the prompt adoption of Rule 12h-7, which would provide an insurance company with a conditional exemption from the periodic reporting requirements of the Exchange Act with respect to securities issued by the company that are registered under the Securities Act and regulated as insurance under state law.

We agree with the Commission's view that, as a general matter, the present Exchange Act reporting requirements may result in duplicative regulation and burdensome reporting since they relate to the same types of financial condition information that insurance companies routinely file with state insurance commissioners. We also agree with the Commission's decision in fashioning Rule 12h-7 as a broad exemption that would apply to any contract that is regulated under the insurance laws of the insurer's home state. The exemption would apply to MVA contracts, insurance contracts that provide certain guaranteed benefits in connection with assets held in an investor's

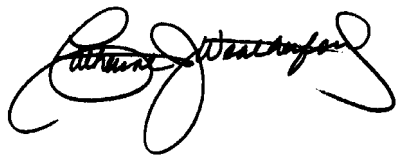
account, and other types of contracts registered under the Securities Act provided the other conditions of the Rule are satisfied.

We note that the condition in paragraph (e) of Rule 12h-7, which requires that the issuer take steps reasonably designed to ensure that a trading market for the securities does not develop, includes a proviso “requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis.” We are concerned that this provision may conflict with state insurance laws and regulations, as administered by state insurance departments. Accordingly, we respectfully urge the Commission to coordinate with state insurance departments to address any conflict that might preclude compliance with the condition or delete this provision altogether.

We also note that the Commission has proposed other rule and form changes that bear on the potential impact of Rule 12h-7 on annuity issuers.³ The Commission’s Security Ratings proposal would eliminate the ability of insurance companies that cannot meet the proposed \$1 billion threshold to use Form S-3 to register MVA contracts thereon. On September 5, 2008, NAVA submitted a comment letter recommending the continued use of Form S-3 for MVA contracts. We respectfully submitted in that letter that the public interest would be well-served if action on the Security Ratings proposal and Form S-3, as it affects MVA contracts, were taken in coordination with any action taken with respect to Rule 12h-7. We take this opportunity to also respectfully submit that Form N-4, as noted above, may serve as an appropriate means to register MVA and other insurance contracts that may be deemed to be securities under the Securities Act.

Again, we appreciate the opportunity to comment. If we can answer any questions or be of further assistance, please contact Michael DeGeorge, General Counsel, at (703) 707-8830, extension 20, or Richard Choi of Jordan Burt LLP at (202) 965-8127. Mr. Choi is co-chair of NAVA's Regulatory Affairs Committee.

Sincerely,



Catherine Weatherford
President & CEO

³ See *Security Ratings*, Securities Act Release No. 8940 (July 1, 2008) (the “Security Ratings Release”) (proposing the elimination of reliance on security ratings by nationally-recognized statistical ratings organizations in connection with the registration of primary offerings of non-convertible debt securities on Form S-3).