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September 10, 2008

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VIA COURIER

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

Re: *Comment on Proposed Rule 151A*
Release Number 33-8933 (File Number S7-14-08)

Dear Ms. Harmon:

On behalf of the Coalition for Indexed Products, I am submitting the enclosed comments regarding the Securities and Exchange Commission's Proposed Rule 151A, which was published for comment on July 1, 2008.

Respectfully submitted,

Eugene Scalia /DJD

Eugene Scalia

ES/djd

Comments

of the

Coalition for Indexed Products

Regarding Proposed Rule 151A

Release Number 33-8933 (File Number S7-14-08)

September 10, 2008

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Regarding Proposed Rule 151A

The Coalition for Indexed Products (the "Coalition") hereby provides these comments on Proposed Rule 151A under the Securities Act of 1933 (the "Proposed Rule"). The Coalition comprises most of the largest fixed indexed annuity issuers, who together accounted for more than $17 billion in fixed indexed annuity sales in 2007. The Coalition is vitally interested in the Proposed Rule and welcomes this opportunity to comment.[1]

The Proposed Rule is profoundly flawed and the Coalition respectfully submits that the proposal should be withdrawn and that the Commission should affirm that fixed indexed annuities—as characteristically structured and offered by insurers today—are not securities within the meaning of the securities laws. As proposed, the rule would narrow the exclusion for annuity contracts in the Securities Act of 1933 (the "Act" or "'33 Act") in a way that is inconsistent with the plain text of the Act and the decisions of the courts. In place of the multi-factored consideration developed by the Supreme Court and previously endorsed by the Commission, the Proposed Rule would install a test that is centered upon a novel and groundless definition of "investment risk" and that ignores other important factors identified by the Court.

Properly understood, fixed indexed annuities are in fact annuities within the meaning of Section 3(a)(8) of the '33 Act, and the Commission's proposal to regulate them as securities manifests a misunderstanding both of these products and of the extensive state regulatory system for the oversight of all fixed annuity contracts. Because fixed indexed annuities already are thoroughly regulated by the states as Congress intended, the Commission also errs in claiming significant regulatory benefits for its proposal and is incorrect in claiming that the proposal will further efficiency, competition, and capital formation. In truth, the benefits claimed by the Commission already are realized through state regulation. The Proposed Rule would only impose an additional, unnecessary layer of conflicting regulatory requirements that would needlessly increase costs and drive from the market a substantial portion of the salesforce that insurers and consumers rely upon for the delivery of fixed indexed annuities. As it raises the

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1 The Coalition's member companies are Allianz Life Insurance Company of North America, American Equity Investment Life Insurance Company, Aviva Life and Annuity Company, Conseco Insurance Company, EquiTrust Life Insurance Company, Life Insurance Company of the Southwest (a National Life Group company), Midland National Life Insurance Company, National Western Life Insurance Company, North American Company for Life and Health Insurance, OM Financial Life Insurance Company (an Old Mutual company), and OM Financial Life Insurance Company of New York.

costs paid by senior citizens and others for these popular products, the Proposed Rule would also restrict competition and the products available to consumers and would impose a burden that falls particularly hard on the small businessmen and women who are integral to the sale of annuities and other insurance products.

For these reasons and the reasons set forth at length below, the Coalition asks that the Commission withdraw its Proposed Rule and affirm that fixed indexed annuities as described below are annuity contracts that fall outside the Commission's regulatory authority.[2]

I. Factual Background: Fixed Indexed Annuities And Proposed Rule 151A.

A. Fixed Indexed Annuities.

Fixed Indexed Annuities ("FIAs") are annuity contracts under which purchasers receive a credit based upon the performance of one or more equity or bond indices, such as the S&P 500 Composite Stock Price Index or the Lehman Brothers Bond Index. Interest credited to an FIA contract is periodically "locked in" (typically on an annual basis) so that previously earned interest credits—like the principal itself—are protected against future decline in value.

The additional, index-based interest component of the contract gives the purchaser the opportunity to have his policy credited with a potentially higher interest rate than might be credited on traditional fixed-rate products—historically, FIA interest credits have averaged 1 to 2 percent higher than comparable fixed rates.[3] In years that the index declines, the purchaser receives no indexed interest, but all previously credited interest and premium payments are unaffected. The index-based component thus provides the purchaser the opportunity for higher indexed interest in years that the index rises, while protecting against index declines. Holders of fixed indexed annuities have experienced no reduction in contract values at any point during the volatile markets of recent years.

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[2] The Coalition previously requested an extension of the comment period for 90 days in order to fully respond to the issues raised in the Proposing Release. *See* Comment of the Coalition for Indexed Products (Aug. 19, 2008). The Coalition again emphasizes that, given more time, it could develop a fuller analysis of the Proposed Rule and provide a more complete response to the significant issues presented by the Proposing Release.

[3] *See Assocs. in Adolescent Psychiatry, S.C. v. Home Life Ins. Co.,* 941 F.2d 561, 565 (7th Cir. 1991) (Easterbrook, J.) ("*AIAP*") (noting that traditional fixed annuities typically "carry relatively low (implicit) rates of return even in an inflation-free economy, because underwriters cannot readily hedge against changes in the economy-wide rate of return"). *See also* September 10, 2008, Statement of Mark Meyer, Ph.D., at 7 (attached as Addendum hereto) ("[T]he average annual credits will have an appreciably higher value than for the comparable fixed-rate annuity due to the typical historic characteristic of equity index increases exceeding the risk-free rate that is embedded in option pricing.").

The formula for calculating the amount of the indexed interest is generally reset annually in advance and includes a method to measure the change in the index, the percentage of the change allowed (the "participation rate"), and a minimum interest credit (the "floor") which is never less than zero. Upper-end "caps" are often applied to the amount of index-related credits for a given year—a 6 percent annual "cap" or 3 percent monthly cap, for example, would constitute the maximum amount credited that year or month for index-related gains. Features such as caps, participation rates, asset fees, spreads, and floors all have the effect of defining and moderating the impact of market factors by placing pre-determined upper and lower limits on the amount of the contract's index-related credits.

A critical feature of FIAs is the applicability of minimum nonforfeiture laws. These laws—which apply to fixed rate annuities also, but not to variable products—require FIAs to have a guaranteed minimum contract value even after any costs and charges are taken into account. Thus, after taking into account possible withdrawal charges discussed below, the contract value must be equal to at least 87.5 percent of initial premiums carried forward with interest at a rate of between 1 and 3 percent per year, depending on a legally-prescribed interest rate benchmark.[4]

Fixed indexed annuities generally also include liquidity options and mortality features. The liquidity options typically include (i) annual penalty-free withdrawals of up to 10 percent of the value of the contract; (ii) the ability to annuitize and receive a stream of payments for life and/or a specified period (these annuitization options frequently can be exercised before the end of the withdrawal charge period without the imposition of any withdrawal charge); (iii) a nursing home rider which permits increased withdrawals of a specified percentage of the contract value if the policyholder enters a nursing home; (iv) a terminal illness rider which permits a withdrawal of some or all of the contract value if the policyholder is terminally ill; and (v) for those fixed indexed annuities sold in qualified markets—such as Section 403(b), eligible governmental 457, and other 401(a) markets—policy loans may be issued up to statutory and/or plan limits.

Two mortality features are common in FIAs. Generally, upon the death of the policyholder (or annuitant), the full contract value is paid to the named beneficiaries without deduction of withdrawal charges. Policyholders may also sometimes annuitize their full contract value, without deduction of withdrawal charges, at any time after the first contract year for a period based on life expectancy.

When an FIA is sold, no sales charge is typically assessed. Instead, sales commissions are paid from the insurance company's general assets, allowing 100 percent of the premium paid

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[4] The minimum annual rate of interest is the lesser of (i) 3 percent per year or (ii) the five-year Constant Maturity Treasury Rate reported by the Federal Reserve, reduced by 1.25 to 2.25 percent but not less than 1 percent. *See* NAIC Standard Nonforfeiture Law. This guaranteed minimum nonforfeiture value applies only at surrender of the annuity contract; it does not establish a minimum policy value or cash value.

to be applied to the contract. In addition, minimum nonforfeiture laws guarantee that a contract owner will receive no less than 87.5 percent of premiums plus a minimum annual rate of interest even if the contract is surrendered in the first year, regardless of any otherwise applicable withdrawal charge. As reflected in the table attached hereto as Exhibit A, the guarantees in index products are comparable to those in traditional fixed-rate annuities.[5]

Unlike premiums from variable annuities, 100 percent of premiums from indexed annuities and other fixed annuities are deposited in the insurer's "general account" and, after deductions for expenses related to the sale of the annuity, invested in the general account. Indexed and other fixed annuity premiums are not placed in a segregated account as is the case of a variable annuity. A typical insurer's general account is invested in "permitted investments" as specified by state law, and consists primarily of high-quality fixed income securities, U.S. and government agency bonds, and other high-quality permitted assets.[6] The insurer bears the risk that changing interest rates and credit conditions will affect the value of the assets in its general account. Poor performance of the assets in the insurer's general account may require the insurer to reduce shareholders' equity to satisfy its obligations to policyholders. The insurer thus bears a wide variety of significant risks, including credit risk, prepayment and extension risk, interest rate risk, asset/liability matching risk, and hedging risk.

The insurer is required by state insurance laws to maintain prescribed levels of capital to support the risks of its business. Even higher capital levels may be required by rating agencies. The level of reserves the insurer maintains for its annuity liabilities is also governed by state insurance laws. Capital and reserve requirements for FIAs are calculated in a substantially identical manner to the calculation for traditional fixed annuities. Purchasers of FIAs are further protected by comprehensive "guaranty fund" laws similar to FDIC insurance. State insurance laws generally provide guarantee fund coverage of at least $100,000 per contract owner (in the event of the insurance company's insolvency) that is similar to the coverage for traditional fixed annuities, and substantially different from the coverage for traditional variable annuities.

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[5] As the Commission notes, some FIAs have been registered when there is an "absence of any guaranteed interest rate or the absence of a guaranteed minimum value." *See* Indexed Annuities and Certain Other Insurance Contracts, Securities Act Release Nos. 33-8933, 34-58022, 73 Fed. Reg. 37,752, 37,754 n.17 (July 1, 2008) [hereinafter Proposing Release]. In this comment, we address FIAs as characteristically structured and offered by insurers today, namely, products that (1) meet state minimum nonforfeiture requirements; (2) declare participation rates, caps, and spreads a year in advance; (3) do not credit negative interest; and (4) "lock in" credited interest against future declines in value.

[6] A small portion of FIA premiums are not invested in typical general account bond investment assets but are invested in options and other similar types of vehicles to hedge against applicable market movements. Pursuant to most state laws, insurance companies in their general accounts are permitted to "hedge" but not "speculate." The insurance company—not the purchaser—assumes the potentially significant risks related to hedging, including changes in value and counterparty performance.

Companies that offer fixed indexed annuities generally adhere to advertising rules—some of which are prescribed by state law—that limit the ways in which fixed indexed annuities are marketed. For example, a variety of terms are prohibited that might confuse the customer as to the type of product being sold. The practice of Coalition members and the prevailing practice in the industry is to emphasize the safety and stability of the products, as well as the fact that FIAs are not investments in or alternatives to the stock market. Guaranteed minimum interest rates must be disclosed, and other similar features that protect against a reduction in value and provide long-term retirement security are also disclosed. The products are presented as long-term savings vehicles.

Except for the operation of the index interest crediting component of the product, the essential elements of fixed indexed annuities are identical to traditional fixed annuities. Unlike variable annuities and mutual funds, fixed indexed annuities do not credit "negative returns" to contract value. Also unlike variable annuities and mutual funds, fixed indexed annuities provide a guaranteed minimum nonforfeiture value. Fixed indexed annuities are subject to permitted investment laws, higher capital requirements, and guaranty fund coverage; variable annuities are not. All annuity products typically require a purchaser to pay fees for administrative costs or to agree to remain in the annuity contract for a certain period of time, with penalties—sometimes called surrender or withdrawal charges—for prematurely removing funds in excess of the amounts that are allowed by the many liquidity features noted above. It should go without saying that withdrawal charges—which are generally included in annuity contracts to cover the costs of premature withdrawals that impair the economic expectations on which the contract was based—are not a basis to distinguish fixed indexed annuities from other fixed annuities which share the same feature under close supervision of state law. *See also Assocs. in Adolescent Psychiatry, S.C. v. Home Life Ins. Co.*, 941 F.2d 561, 567 (7th Cir. 1991) (Easterbrook, J.) ("*AIAP*") (stating withdrawal charges do "nothing to throw *investment* risk on the investor") (emphasis in original).

As discussed more fully at pages 20-27 below, states have a comprehensive regulatory system for fixed indexed annuities and other fixed annuity products, elements of which include mandatory disclosure of product terms; contract "readability"; evaluation of "suitability" of the product for the purchaser; monitoring of marketing; and authority to investigate complaints and institute enforcement actions regarding improper practices. Indeed, even as the Commission proposes to regulate fixed indexed annuities *as securities*, it has encouraged state regulation of the products *as annuities* and relies upon that regulation to this day.

B. The Proposed Rule.

Proposed Rule 151A would define a class of annuities that would be deemed ***not*** to be an annuity or optional annuity within the meaning of Section 3(a)(8) of the '33 Act. The Proposed Rule has two prongs. The first determines whether the product is within the bounds of the rule at all by inquiring whether the annuity is "indexed" in some fashion; the second prong then applies a purportedly closer analysis to determine whether the product is indeed *not* an annuity for purposes of Section 3(a)(8). Specifically, under Proposed Rule 151A an annuity would be a security if:

(1) 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;[7] and
(2) Amounts payable by the issuer under the contract are more likely than not to exceed the amounts guaranteed under the contract.

Indexed Annuities and Certain Other Insurance Contracts, Securities Act Release Nos. 33-8933, 34-58022, 73 Fed. Reg. 37,752, 37,774 (July 1, 2008) [hereinafter Proposing Release]. The second prong purportedly accounts for investment risk borne by the purchaser. The status under the '33 Act of annuities that fall outside the definition (*i.e.*, are not "not an annuity") "would continue to be determined by reference to the investment risk and marketing tests articulated in existing case law under Section 3(a)(8) and, to the extent applicable, the Commission's safe harbor rule 151." Proposing Release at 37,762.

II. Fixed Indexed Annuities Are Annuity Contracts Within The Meaning Of Section 3(a)(8).

Section 3(a)(8) of the '33 Act excludes from the Act any annuity contract (or optional annuity contract) issued by an insurance company subject to the supervision of a state insurance commissioner (or similar entity or official).[8] The plain meaning and purpose of the Act, Supreme Court precedent, and lower court decisions all make clear that fixed indexed annuities as characteristically structured are covered by Section 3(a)(8) and are exempt from regulation by the Commission. The Commission should acknowledge this and withdraw its Proposed Rule.

A. Fixed Indexed Annuities Are Annuity Contracts Within The Plain Meaning Of The Statute.

Application of Section 3(a)(8) begins with the plain meaning of the words in the statute. *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). In relevant part, Section 3(a)(8)

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[7] "Security" would have the same meaning it has in Section 2(a)(1) of the '33 Act. *See* Proposing Release at 37,759.

[8] Section 3(a)(8) of the Act provides in full:

> Section 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:
>
> . . .
>
> (8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia[.]

A product falling within Section 3(a)(8) is also exempt from all other provisions of the Act. *Tcherepnin v. Knight*, 389 U.S. 332, 342-43 n.30 (1967); Proposing Release at 37,755 n.27.

excludes "[a]ny insurance or endowment policy or annuity contract or optional annuity contract" from the Securities Act. Two things are notable about this language: First, if a contract is an annuity (and is issued by a corporation regulated by a state insurance commission or the like), it is exempt from SEC regulation. Section 3(a)(8) is not an invitation for the Commission to speculate about the *types* of annuities that Congress might have wished the SEC to regulate and those left for the states. And the Commission's view of the "regulatory and protective purposes" (Proposing Release at 37,757; citation omitted) of the securities laws will not suffice to regulate an instrument otherwise properly regarded as an annuity, not a security.

Second, the text of Section 3(a)(8) separately refers to insurance policies *and* annuity contracts—the two are not the same, and the Commission may not predicate a rule on the assumption that annuities must display *all* the characteristics of life insurance, for instance, and none that are associated with investments. "[C]ontracts of life insurance and of annuity are distinctly different," 1 J. Appleman & Appleman, *Insurance Law and Practice*, § 84, at 295 (1981), and in some respects "[a]nnuity contracts must . . . be recognized as investments rather than insurance." *Nationsbank of N.C. v. VALIC*, 513 U.S. 251, 259 (1995) (quoting Applebaum & Applebaum); Proposing Release at 37,757 n.42 (recognizing annuities as a "form of investment"). Thus, to show that a product entails elements of the "'investment experience'" (Proposing Release at 37,758; citation omitted) is merely to show that it possesses characteristics of an annuity, which are excluded under Section 3(a)(8). That fixed indexed annuities, like all annuities, display some investment characteristics not found in life insurance contracts is hardly a basis to conclude that they are securities that may be regulated by the Commission.[9]

It is notable as well that fixed indexed annuities are regulated thoroughly by the states, which recognize them as annuities, not securities. *See* Buyer's Guide To Fixed Deferred Annuities With Appendix For Equity-Indexed Annuities, National Association of Insurance Commissioners, at 6 (attached as Exhibit B): "When you buy an equity-indexed annuity you own an insurance contract. You are not buying share of any stock or index." *And see* Comment

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[9] The Proposing Release quotes out of context Justice Brennan's reference to "the investment experience" in his concurring opinion in *SEC v. Variable Annuity Life Insurance Co. of America*, 359 U.S. 65, 77-78 (1959) (Brennan, J., concurring). Justice Brennan referred in full to a stock-holder being "a *sharer* in the investment experience *of the company*" that solicited her investment—literally, a shareholder. *Id.* at 77 (emphases added). In such a case, "the coin of the company's obligation is not money but is rather the present condition *of its investment portfolio*." *Id.* at 78 (emphasis added). It was this fact—not the fact of investment risk alone—that was central to Justice Brennan's conclusion that a variable annuity whose value was determined by the portfolio of the issuing company was a security. *See id.* at 78-79 ("[T]he majority of [the securities laws'] provisions are of greatest regulatory relevance . . . *where the investors . . . participate on an 'equity' basis in the investment experience of the enterprise*") (emphasis added); *id.* at 80 ("[W]here the investor is asked to put his money *in a scheme for managing it on an equity basis*, it is evident that the Federal Act's controls become vital.") (emphasis added). Even as it places inordinate reliance on this two-Justice concurring opinion, the Proposing Release quotes the opinion out of context and misses its essential point.

of the National Governors' Association (Sept. 4, 2008) ("States already regulate equity-indexed annuities as insurance products."). State regulation of the products is not dispositive, as the Supreme Court's decision in *VALIC* shows. But the Commission, like the Supreme Court, should "start with a reluctance to disturb the state regulatory systems that are in actual effect, either by displacing them or by superimposing federal requirements on transactions that are tailored to meet state requirements." *SEC v. Variable Annuity Life Ins. Co. of Am.*, 359 U.S. 65, 68 (1959). The Commission should be all the more reluctant when its Proposed Rule's parameters are defined by product features that are requirements of state law, such as minimum guarantees: The Commission cannot predicate a rule on a state law regulatory regime for *annuities*, and claim convincingly that it is regulating *securities*.

Indeed, the Commission is proceeding in an area where any claim to deference is at its low ebb. The McCarran-Ferguson Act, 15 U.S.C. § 1012(b), establishes a rule of construction under which federal law shall not be interpreted to "supersede any law enacted by any State for the purpose of regulating the business of insurance." McCarran-Ferguson "was intended to further Congress' primary objective of granting the States broad regulatory authority over the business of insurance." *U.S. Dep't of Treasury v. Fabe*, 508 U.S. 491, 505 (1993). Even apart from the constraints imposed on the Commission by McCarran-Ferguson, the courts recognize that deference to an agency's legal interpretations is misplaced when the agency's action would expand its own jurisdiction. *See Adams Fruit Co. v. Barrett*, 494 U.S. 638, 650 (1990) ("'[A]n agency may not bootstrap itself into an area in which it has no jurisdiction.'" (quoting *Fed. Mar. Comm'n v. Seatrain Lines, Inc.*, 411 U.S. 726, 745 (1973)).

B. Courts' Interpretation of Section 3(a)(8) Confirm That Fixed Indexed Annuities Are Annuity Contracts Under The Act.

The Commission attempts, as it must, to harmonize its proposed rule with two Supreme Court decisions: *SEC v. Variable Annuity Life Insurance Co. of America*, 359 U.S. 65 (1959) ("*VALIC*"), and *SEC v. United Benefit Insurance Co.*, 387 U.S. 202 (1967). However, the products in those cases were fundamentally different from both traditional fixed rate annuities and fixed indexed annuities. The purchaser in those cases acquired a share in a fund managed by the issuing company and assumed virtually the entire investment risk—namely, the risk of significant loss of principal due to negative investment performance—while the company assumed virtually none. The value of fixed indexed annuities, by contrast, does not depend upon investment management by the issuing company, and the products provide a statutorily defined minimum guaranteed value as well as possibly higher values as a result of the interest crediting methodology.

The difference between the products in those cases and FIAs is thus large, whereas any difference between FIAs and traditional annuities is literally at the margins. Fixed indexed annuities are indeed annuities, they are regulated as such by the states, and the Proposed Rule is neither legally justified nor warranted.

1. *VALIC* And *United Benefit*.

The products at issue in *VALIC* were variable annuities. Purchasers paid premiums which were invested in a fund consisting largely of common stock. Annuitants received a proportionate interest in the investment fund, and benefits were paid according to the fund's after the fact, actual investment performance. There were no guaranteed payments, and the entire principal investment was thus subject to market performance. In the Court's words, the contracts "guarantee[d] nothing to the annuitant except an interest in a portfolio of common stocks or other equities—an interest which has a ceiling but no floor." *VALIC*, 359 U.S. at 72 (footnote omitted).

On these facts, the Court held that the products were securities falling outside the exemption of Section 3(a)(8). "[T]he variable annuity place[d] *all* the investment risks on the annuitant," the Court emphasized, and "*none* on the company." *Id.* at 71 (emphasis added). There thus was not "true underwriting of risks, the one earmark of insurance . . . ." *Id.* at 73. "[T]he concept of 'insurance' involves some investment risk-taking on the part of the company," the Court explained, and "absent some guarantee of fixed income, the variable annuity places all the investment risks on the annuitant . . . ." *Id.* at 71. Because the variable annuity had "no element of a fixed return," the returns it provided depended entirely "on the wisdom of the investment policy"; it therefore was properly regulated as a security. *Id.* at 70.[10]

In *United Benefit*, purchasers' premiums were placed in a "Flexible Fund," which was maintained as a separate account. The company—whose marketing materials emphasized the investment acumen of the fund managers and the opportunity to "'share in the growth of the country's economy'"—invested the Fund "with the object of producing capital gains as well as an interest return, and the major part of the fund [was] invested in common stocks." 387 U.S. at 205 & n.3. At any time before maturity the purchaser was entitled—in the Supreme Court's words—"to his *proportionate share* of the total fund," and could withdraw all or part of his share. *Id.* at 205 (emphasis added). Alternatively, the purchaser could demand cash payment of a "net premium guarantee" that rose from 50 percent of his premium payments in the first year to 100 percent after 10 years. *Id.* at 205-06. This guarantee was largely illusory, since the company had set it "by analyzing the performance of common stocks during the first half of the 20th century and adjusting the guarantee so *that it would not have become operable under **any** prior conditions.*" *Id.* at 209 n.12 (emphasis added). The guarantee was thus "low enough that the [company's] risk of not being able to meet it through investment [was] insignificant." *Id.* at 209. *See also Otto v. Variable Annuity Life Ins. Co.*, 814 F.2d 1127, 1132 (7th Cir. 1986), *rev'd on rehearing*, 814 F.2d 1140 (7th Cir. 1987) ("[I]n both [*VALIC* and *United Benefit*,] the insurance company guaranteed a minimum return so low as to place the investment risk on the investor rather than on the insurance company.").

At maturity, the purchaser's interest in the fund terminated, and he could receive the cash value of the policy—as measured by his interest in the fund or the net premium guarantee, "whichever [was] larger"—or he could have his interest converted into a life annuity under

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[10] As noted, Justice Brennan based his concurring opinion on the view that "where [the investor shares in the investment experience of the insurance company itself], the federally protected interests in disclosure to the investor of the nature of the corporation to whom he is asked to entrust his money and the purposes for which it will be used become obvious and real." *Id.* at 78.

conditions specified in the contract. *United Benefit*, 387 U.S. at 205-06. As noted, the guarantee was so minimal that—based on market performance over the *past 50 years*—the company was expected to always have the returns to fund it from the purchaser's own payments.

In applying Section 3(a)(8), the Court first determined to analyze the accumulation period in which the purchaser was invested in the "Flexible Fund" as a free-standing product, since there was no necessary link to the annuity that the purchaser was able, but not required, to obtain at maturity. The Court then found "little difficulty" concluding that the Fund fell outside of Section 3(a)(8)'s provision for annuities and in fact was an investment contract under Section 2 of the Act. Far from being structured in a manner resembling traditional annuities, "'Flexible Fund' arrangements require special modifications of state law," the Court emphasized—specifically, their essentially illusory "guarantee" required an exemption from state nonforfeiture laws (which apply with full force to FIAs). *Id.* at 211. The products, the Court further emphasized, resulted in the purchaser literally holding a "proportionate share" in a Fund that had been marketed based on "the experience of United's management in professional investing" rather than on "the usual insurance basis of stability and security." *Id.* The fact that the company purported to back-stop the purchaser with a cash-value guarantee did not convert into an annuity an interest that, at heart, was simply a share in a fund invested in common stock. The purchaser was a shareholder, and the fact that his investment "to some degree is insured" by a minimal guarantee did not render his investment "a contract of insurance." *Id.*

2. Fixed Indexed Annuities Meet The *VALIC* And *United Benefit* Test.

Under the criteria applied in *VALIC* and *United Benefit*, fixed indexed annuities as characteristically structured are plainly annuities exempt from SEC regulation by Section 3(a)(8). The purchaser of a fixed indexed annuity is not subjecting his entire principal—*or any part of it*—to the vagaries of the market or the performance of an individual security. It is thus an entirely different arrangement than in *VALIC*, where the purchaser essentially had "nothing except an interest in the portfolio of common stocks or other equities." *VALIC*, 359 U.S. at 72. In *United Benefit*, where the purchaser again held a "proportionate share" in a fund of common stocks in a manner that was "somewhat similar to . . . the variable annuities" in *VALIC*, the Court made clear that providing (effectively illusory) insurance of the participant's securities investment did not thereupon convert an investment in securities into an insurance (or annuity) contract. The purchaser's interest was explicitly investment in a stock fund, and the Court treated it as such. *See also Assocs. in Adolescent Psychiatry, S.C. v. Home Life Ins. Co.*, 941 F.2d 561, 567 (7th Cir. 1991) (Easterbrook, J.) ("*AIAP*") (distinguishing circumstances where "the seller [is] supplying only investment advice"). As observed in note 9 above, the Proposing Release places heavy reliance on the two-Justice concurring opinion in *VALIC* authored by Justice Brennan, yet the whole thrust of that opinion is that the securities laws are triggered when "investors . . . participate on an 'equity' basis in the investment experience" of the issuing company. *VALIC*, 359 U.S. at 79.

Fixed indexed annuities, by contrast, possess the essential elements of a traditional declared rate annuity except that purchasers' interest credit is tied to the performance of a stock index rather than being an express declared rate. Accordingly, state insurance laws themselves—which distinguish between variable and fixed products and exempt variable products from protections provided to fixed products, as *United Benefit* recognizes—classify

FIAs as fixed products and regulate them as such. The fact that an FIA's value may relate in part to equities' performance cannot be a sufficient reason to treat them as securities because if *any* link to a stock or group of stocks took a product outside of Section 3(a)(8), then *VALIC* and *United Benefit* would simply have said so. Rather than consult the multiple factors that it did, the Court would merely have observed that the products' value increased or decreased with the performance of equities; that this constituted "investment risk"; and that the products therefore were securities. The Court applied no such analysis—and the Commission may not apply it now.

In other respects as well, the contrast between FIAs and *VALIC* and *United Benefit* is plain. State nonforfeiture laws guarantee that a contract owner will receive no less than 87.5 percent of premiums even if the contract is surrendered in the first year, and assure that this amount will increase at a minimum annual rate of 1 to 3 percent for the life of the contract. This guarantee is real, genuine, and different in kind from the United Benefit guarantee that had required an exemption from state nonforfeiture laws in order to be set so low "that it would not have become operable." *United Benefit*, 387 U.S. at 209 n.12. In *United Benefit* the Court also placed significant weight on the fact that the Flexible Fund guarantees were "substantially" lower than guarantees for traditional annuities (*id.* at 208), whereas the guarantees for FIAs are quite comparable to those for traditional fixed annuities. *See* Exhibit A (showing that the guarantees in index products are comparable to those in traditional fixed-rate annuities).

For these and other reasons, purchasers of FIAs bear no "investment risk" as that term is properly understood, while the risk borne by the insurer is considerable. From the day of issue, purchasers of FIAs are assured that in the absence of early withdrawal they will receive their principal plus interest. Even in the event of early withdrawal, they are assured the lion's share of their principal due to state nonforfeiture laws. The insurer, on the other hand, must realize returns sufficient to fund payment of the guaranteed minimum value, as well as any index-related interest credits. The withdrawal charge itself is not an "investment risk," it is a charge of a type that is prevalent under an infinite variety of contracts whose economic value depends in part on their duration and which provide, accordingly, for compensation in the event of early termination. *See AIAP*, 941 F.2d at 567 (stating withdrawal charges do "nothing to throw *investment* risk on the investor") (emphasis in original). The charge typically decreases to zero over time and is limited so as to not encroach the minimum guaranteed value. It is taken regardless of the performance of the index, and has not been set or adjusted with reference to the long-term performance of any security or group of securities. *Compare United Benefit*, 387 U.S. at 209 n.12 (stating the company had set its guarantee "by analyzing the performance of common stocks"). Most policies annually exempt up to 10 percent of the value of the policy from withdrawal charges.

Finally, as noted at page 5 above, it is the practice of companies that issue FIAs and the states that regulate them to take numerous precautions to ensure that the products are marketed primarily for the safety and assurances that they offer, rather than as an invitation to share in the "investment experience" of the issuing company. *VALIC*, 359 U.S. at 78-79 (Brennan, J.).

For these reasons, the courts have had no difficulty determining that fixed indexed annuities and similar products are covered by Section 3(a)(8). Applying the principles articulated in *VALIC* and *United Benefit*, the court in *Malone v. Addison Insurance Marketing,* *Inc.*, found that the insurer of an FIA had assumed as much or more investment risk than the purchaser because it was obligated to return the premium plus the greater of 3 percent or the S&P Index, regardless of how the market performed. 225 F. Supp. 2d 743, 750 (W.D. Ky. 2002). The court noted that there was no direct correlation between the benefit payments and the performance of the investments made with the contract owner's premium. *Id.* ("Plaintiff's benefit payments from American Equity were not directly dependent on the performance of investments made with her money. That is to say, as a structural matter, Plaintiff's contract did not operate like a variable annuity: her payments were not a function of a personalized portfolio and her principal was not held in an independent account."). The only investment uncertainty assumed by the investor, the court found, was whether she would receive interest beyond 3 percent per year on her premium payment:

> Plaintiff's risk was not that she would lose the value of her initial investment, but rather the risk that had she chosen a different contract her money might have been worth more than 134 percent at the end of the ten-year contract period. That type of risk—that she could have gotten a better deal but for the pressure she encountered to enter into this particular contract—is not the type of risk central to determining whether a security exists.

Id. at 751.[11]

Other court decisions are consistent with *Malone* and conflict with the Proposed Rule's approach, under which all fixed indexed annuities would be deemed securities through a test that effectively ignores the risk borne by the insurer. In *AIAP*, for example, the Seventh Circuit held that a "Flexible Annuity" with characteristics similar to fixed indexed annuities fell within the Section 3(a)(8) exemption. In assessing the risks borne by insurer and insured, Judge Easterbrook noted that "[n]o annuity transfers all of the risk to the seller." Rather,

> [a]ny fixed annuity places on the buyer the risk that the seller's portfolio will perform too poorly to finance the promised payments. Section 3(a)(8) therefore necessarily exempts annuities that leave purchasers with some investment risk. If on the other hand a seller just pins the label "annuity" on a mutual fund, in which the buyer bears all of the risk, § 3(a)(8) is inapplicable.

941 F.2d at 566. The court also emphasized that with the product there, as with FIAs, the interest component did not depend upon the investment management or advice of the issuer such that it "made the 'annuity' look like a mutual fund, with the seller supplying only investment advice." *Id.* at 567. (It bears noting also that linking a company's obligation to pay to the performance of its own account directly moves risk from company to purchaser. By contrast, when a company must make payments based on factors other than its own portfolio's

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[11] The Proposing Release acknowledges only *Malone*'s alternative holding that the fixed indexed annuity qualified under SEC Rule 151, while ignoring the court's holding that the fixed indexed annuity fell within Section 3(a)(8). *See* Proposing Release, at 37,757 n.41; *Malone*, 225 F. Supp. 2d at 751.

performance, no such direct transfer of risk occurs; the company bears the risk of having to pay regardless of its portfolio's performance.) *See also Olpin v. Ideal Nat'l Ins. Co.*, 419 F.2d 1250, 1261-63 (10th Cir. 1969) (considering risks to insurer and purchaser in connection with endorsement to life insurance); *Berent v. Kemper Corp.*, 780 F. Supp. 431, 442-43 (E.D. Mich. 1991) (single premium life insurance policy), *aff'd*, 973 F.2d 1291 (6th Cir. 1992); *Dryden v. Sun Life Assurance Co. of Canada*, 737 F. Supp. 1058, 1062-63 (S.D. Ind. 1989) (whole life insurance policies with dividend feature).

In *Otto v. Variable Annuity Life Insurance Co.*, 814 F.2d 1127 (7th Cir. 1986), *rev'd on rehearing* 814 F.2d 1140 (7th Cir. 1987), the Seventh Circuit initially applied *VALIC* and *United Benefit* to hold that a product with both a fixed interest rate and a non-fixed excess interest rate was not an annuity, but subsequently reversed itself based on a factor not present with fixed indexed annuities. In its initial decision in *Otto*, the Seventh Circuit understood that discretionary changes in the excess interest rate affected only new deposits, and that "past deposits would continue to earn the interest rate in effect at the time the deposit was made," that is, that "VALIC in effect guarantees the excess interest on every deposit for the life of the annuity contract." *Id.* at 1140. After briefing on a petition for rehearing the court reversed itself and held that the product was a security, because—briefing had disclosed—VALIC had the "unfettered discretion" to change the current (excess) interest rate on past deposits, as well as "the absolute right to stop all excess interest payments on all deposits, past or present." *Id.* at 1141. The "claimed right to change established excess interest rates and to eliminate excess interest payments entirely *at any time* surely tends to shift the investment risk from VALIC" to the purchaser, the court explained. *Id.* (emphasis in original). With fixed indexed annuities, by contrast, excess interest is typically locked-in once earned, becoming a guarantee for which the company then bears the risk. Further, the interest crediting formula is stated in advance, is subject to statutorily prescribed minimums, and, once set, may not be changed by the insurer during the stated period.

The Commission, for its part, took the position that even *with* the company's complete discretion to set excess interest rates, the product in *Otto* remained an annuity. The Commission filed a Supreme Court *amicus* brief urging certiorari to review and reverse a "case [that] has caused great interest and concern in the insurance industry." Brief for the United States as *Amicus Curiae* at 5, *Variable Life Annuity Ins. Co. v. Otto*, 486 U.S. 1026 (May 23, 1988) (denying certiorari) [hereinafter *Otto Amicus Brief*]. In marked contrast to its Proposing Release—where the risk borne by the company is effectively ignored—the Commission stated in *Otto* that "it is clear that the assumption of substantial 'investment risk' by the insurance company is one *crucial* factor." *Id.* at 6 (emphasis added). The government explained:

> The relevant purpose of the securities laws is to ensure that investors in securities are fully and accurately informed about the issuer and the investment's relevant features, including its risks. *This protection is not needed if, inter alia, the insurance company assumes a sufficient share of investment risk, which reduces the risk to the participant, who is also protected by state regulation.*

Id. at 7 (emphasis added and footnote omitted). By placing no weight on the investment risk assumed by the insurer in fixed indexed annuity contracts, the Proposed Rule now takes a position contrary to the Supreme Court's, the lower federal courts', and the Commission's own repeated pronouncements.

III. In Designating Fixed Indexed Annuities As Securities, The Proposal Misconstrues "Investment Risk," Misconstrues The Supreme Court Cases On Which It Purports To Rely, And Adopts A Test That Omits Factors That The Proposing Release Concedes Are Important In Distinguishing Annuities From Securities; The Proposal Is Arbitrary And Capricious And Should Be Withdrawn.

The Executive Summary to the Proposing Release promises a rule that is based "upon a familiar concept: The allocation of risk." "Insurance provides protection against risk," the Commission explains, "and the courts have held that the allocation of investment risk is a significant factor in distinguishing a security from a contract of insurance." Proposing Release at 37,752.

The rule and analysis that the Commission provides, however, fall short of those benchmarks. The courts have, as the Commission says, made the *allocation* of investment risk "a significant factor" in applying 3(a)(8). But the Proposing Release overlooks both sides of that allocation by ignoring the risk borne by the company; it distorts the two-sided nature of this allocation by adopting a novel definition of investor risk that is far from "familiar"; and it fails to give any weight to other factors emphasized by the Supreme Court and acknowledged by the Commission to be significant.

The Proposed Rule reaches an erroneous conclusion via an analysis that is arbitrary, capricious, and contrary to law. It should be withdrawn.

A. The Likelihood Of Additional Financial Returns Is Not "Investment Risk."

The Proposing Release posits that the likelihood of additional financial returns due to the performance of securities is "investment risk," and makes this effectively the sole determinant of whether a widespread and popular product that is regulated by every state in the country as an annuity is nonetheless a security for purposes of Section 3(a)(8). In doing so, the Release contorts the concept of "investment risk."

As used in *VALIC*, *United Benefit*, and common parlance, a purchaser's primary investment risk is the ***risk*** to his ***investment***—the possibility that his principal will be lost. It is for this reason that the Supreme Court placed more emphasis on the guarantee to the purchaser than on any other single factor, focusing intently on what assurance the purchaser had that he would get all or substantially all of his money back. An increased likelihood that after the withdrawal period an investor will get back a guaranteed amount *and more* is not risk at all—to the contrary, the more certain an investor is to receive an amount higher than what was guaranteed, the less risk he takes. *Compare Webster's New World Dictionary*, Second College Edition (1976) (defining risk as "the chance of injury, damage, or loss; dangerous chance; hazard," or, in the insurance sense, "a) the chance of loss b) the degree of probability of loss c) the amount of possible loss to the insuring company"). The indexed interest in FIAs is in fact a potential benefit. Although that benefit may be greater in one period than another, it does not affect the value of the underlying asset. In locating "investment risk" in the probability of earning additional money—the more, the riskier, evidently—the Commission has adopted a truly peculiar and insupportable predicate for its rule. *See* the further discussion in the September 10, 2008, Statement of Mark Meyer, Ph.D., attached as Addendum hereto.

The court in the *Malone* case recognized this basic economic truth: "Plaintiff's risk was not that she would lose the value of her initial investment, but rather the risk that had she chosen a different contract her money might have been worth more than 134 percent at the end of the ten-year contract period. *That type of risk—that she could have gotten a better deal but for the pressure she encountered to enter this particular contract—is not the type of risk central to determining whether a security exists.*" 225 F. Supp. 2d at 751 (emphasis added) (citing *VALIC*, 359 U.S. at 71). The possibility of extra benefits on a guaranteed contract is simply not a "risk" that may be made the central consideration in whether fixed indexed annuities are annuity contracts under Section 3(a)(8).

Indeed, the Commission's definition of risk in this manner has absurd consequences that further render it arbitrary, capricious, and contrary to law. Under the Commission's approach, an FIA with an interest crediting formula that was likely to yield no indexed interest would be deemed *not* to present risk to warrant regulation as a security. Suppose that a broker-dealer sits down with a client and tells her that two possible investments have been identified, one that is almost certain to return $100 and one that presents a high likelihood of plummeting to $40—and that he recommends she purchase the latter product because it presents less risk. Is that an analysis the Commission endorses? Ordinarily the Commission regards its regulatory interests to increase, not decrease when investors are induced to acquire products whose value is more likely than not to decline.

In addition to defying common sense, the approach of the Proposing Release turns *VALIC* and *United Benefit* on their head. The Court in both cases was concerned about circumstances where investors might lose their whole investment, or come away with nothing more than a minimal guarantee. The Commission now proposes to regulate precisely when the investor *will* receive a substantial guarantee and is likely to receive interest on top of this as well. That approach is insupportable. And to the extent the Commission's answer is that any equity-related component presents "investment risk"—either "upside" or "downside"—which is sufficient to render it a security, *VALIC* and *United Benefit* are a full reply to that as well: If *any link* to equities rendered a contract a security, then *VALIC* and *United Benefit* would simply have said so, rather than identifying the numerous considerations that the Proposing Release itself first acknowledges, then ignores.

The Commission's treatment of investment risk in the Release conflicts with its *amicus* brief in *Otto* as well. There, the Commission emphasized that purchasers "did not bear the common investment risk that changes in the market will erode *[their] capital contributions*." Additionally, the company "guaranteed an interest rate of 3-1/2% or 4% on principal and accrued interest so that Otto knew that her contributions would produce some income." *Otto Amicus Brief* at 7 (emphasis added). On these facts, the Commission deemed any risk borne by the purchaser to be insufficient to convert the contract to a security, even though—the brief acknowledged—the purchaser "did have some investment risk" because the product carried a declared rate of 14.5 percent; this was "over ten points higher than the guaranteed minimum rate"; and this excess rate (as well as excess interest earned in prior years) "*could be reduced or* *eliminated at [the company's] discretion.*" *Id.* at 8 (emphasis added). The Commission bears the burden of squaring the concept of "investment risk" set forth in this Proposed Rule with its prior statements in the Supreme Court.

The mistaken concept of investment risk in the Proposing Release causes the Commission to make a number of other misstatements. For example, the Proposing Release states that "[i]ndexed annuities are similar in many ways to mutual funds, variable annuities, and other securities," and that the purchaser of an indexed annuity "assumes many of the same risks that investors assume when investing in mutual funds, variable annuities, and other securities." Proposing Release at 37,757-59. That is profoundly inaccurate. The principal investment risk borne by purchasers of mutual funds and variable annuities is the loss or decline in value of their capital due to a decline in the underlying securities. That is the risk the Supreme Court focused on in *VALIC* and *United Benefit*, and it is not a risk borne by purchasers of fixed indexed annuities because of the guarantee to principal and minimum interest supplied by state nonforfeiture laws. The risk to one's principal investment posed by mutual funds and variable annuities simply is not comparable.[12]

B. *The Proposed Rule Fails To Consider Key Factors Identified By The Supreme Court In Applying Section 3(a)(8).*

In making a mistaken concept of "investment risk" effectively the sole determinant of when an FIA is actually a security, the Proposed Rule commits another fundamental error: It neglects other factors that the Supreme Court repeatedly has said are central considerations in applying Section 3(a)(8). Under the Supreme Court's cases, the Commission concedes,

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[12] The mischaracterization of investment risk in the Proposing Release also leads it to inaccurately portray the role of withdrawal charges in fixed indexed annuities and annuities generally. Instead of treating them as a normal contract term, paragraph (b)(1) of the Proposed Rule provides in effect that withdrawal charges are not to be taken into account when determining amounts payable but are taken into account when determining amounts guaranteed. This effectively guarantees that FIAs with withdrawal charges will "fail" the test and become securities regardless of any other feature, since as long as there is a withdrawal charge the amount payable will exceed the amount guaranteed by at least the amount of the withdrawal charge. The Release attempts to justify excluding withdrawal charges from amounts payable by stating that the Commission is "proposing this calculation methodology in order to eliminate the differential impact that such charges would have on the determination depending on the assumptions made about contract holding periods." Proposing Release at 37,761. However, that "differential impact" based on assumed holding periods *is equally applicable to the determination of amounts guaranteed.* Neither the Release's rationale nor anything else justifies treating withdrawal charges differently in determining the amounts payable from the amounts guaranteed. The Commission's proposed treatment of withdrawal charges now also conflicts with its adoption of Rule 151, where it stated that a withdrawal charge "normally does not shift additional investment risk to the contract owner." Definition of Annuity Contract or Optional Annuity Contract, Release No. 33-6645, 51 Fed. Reg. 20,254, 20,257 n.20.

"[F]actors that are important to a determination of an annuity's status under Section 3(a)(8) include (1) the allocation of investment risk between insurer and purchaser, and (2) the manner in which the annuity is marketed." Proposing Release at 37,755. Yet, the Proposed Rule provides for no consideration of the investment risk borne by the insurer, nor for how the FIA is marketed. These omissions conflict with *VALIC*, *United Benefit*, and the entire body of Section 3(a)(8) caselaw. They render the Proposed Rule arbitrary and capricious and contrary to law for that reason, and because the Commission has proposed a rule that fails to give effect to the "facts and circumstances factors" that the rule's Proposing Release says are determinative. Proposing Release at 37,757.[13]

1. The Proposed Rule Improperly Omits Consideration Of Insurers' Investment Risk.

In *VALIC* and *United Benefit*, the Supreme Court considered the risk borne by both insurer and insured and in reaching its decision in both cases emphasized that the insurer took virtually no investment risk. In the words of the Commission's Supreme Court *amicus* brief in *Otto*, "[I]t is clear that the assumption of substantial 'investment risk' by the insurance company is one *crucial* factor." *Otto Amicus Brief* at 6 (emphasis added). Yet, the Proposing Release essentially focuses exclusively on the purported risk borne by the purchaser, without meaningfully acknowledging or discussing the risks of the insurer.

That is error, and whatever rule the Commission adopts must give significant weight to the risk borne by the company. That requires an analysis of the guarantees provided by the company because each guarantee places an investment risk on the company (and, conversely, takes that risk off of the purchaser). In a typical fixed indexed annuity, the insurer bears significant investment risk by providing (1) guarantees of principal, (2) guarantees reflected in the minimum nonforfeiture value or otherwise, (3) guarantees of previously credited interest, (4) the guarantee to credit indexed interest in accordance with the performance of the relevant index and the terms of the contract, and (5) for the establishment of the precise terms of the index interest crediting method prospectively, at the beginning of each term. Importantly, while a stock index's failure to indicate indexed interest credits in a given year does not itself cause loss to the insurer, the insurer assumes risk in the years the index *does* require credits because under the typical contract it locks those gains in for the purchaser and guarantees them regardless of the performance of the insurer's investments in the years ahead. In this respect a down year in the markets can indeed increase exposure for the insurer because the company may experience a *decrease* in the funds that *it has* available to cover its guarantees even as the purchaser is assured

[13] The Commission's narrow approach is also inconsistent with the approach courts have taken in applying insurance exceptions found in other federal statutes, such as the McCarran-Ferguson Act and ERISA. *See, e.g., Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 129 (1982) (explaining multiple factors in determining the "business of insurance" exception in McCarran-Ferguson); *Ky. Ass'n of Health Plans v. Miller*, 538 U.S. 329, 330, 342 (2003) (applying ERISA insurance exception when it "substantially affect[s] the risk pooling arrangement between the insurer and the insured").

previously credited interest and the increase set forth in the guaranteed minimum non-forfeiture value provided under state law.

The insurer takes on risk in other respects as well: Risk inheres in the limits many contracts place on the company's ability to change the terms of the indexed interest crediting method (*i.e.*, limits on changes in caps, participation rates, spreads, etc.) during the life of the contract. Further risk results from limitations on, and the uncertainty of, the company's ability to hedge against its risks. And, the courts and Commission have recognized that the company's assumption of mortality risk must be weighed under Section 3(a)(8). *See VALIC*, 359 U.S. at 71; *Grainger v. State Sec. Life Ins. Co.*, 547 F.2d 303, 305 (5th Cir. 1977); Definition of Annuity Contract or Optional Annuity Contract, Release No. 33-6645, 51 Fed. Reg. 20,254, 20,256; *Otto Amicus Brief* at 9.

Finally, the Proposed Rule fails because it does not *weigh* the investment risk borne by the company against that borne by the purchaser and because its focus on the purchaser's indexed interest "risk" lacks any proportionality—it addresses solely whether any indexed interest is likely to be paid and not the potential *amount* of indexed interest relative to the guaranteed amounts. There is no assessment of where the greater risk lies; rather, the proposal essentially converts *VALIC*'s concern that the purchaser not bear *all* the risk into a rule that the purchaser bear *no* risk. Under the caselaw that is clear error, and for a rule that purports to be founded on "a familiar concept: the *allocation* of risk," it is arbitrary and capricious. Proposing Release at 37,752 (emphasis added).

2. The Proposed Rule Does Not Consider Product Marketing.

The Supreme Court has made clear that marketing must be taken into account in applying Section 3(a)(8), and the Proposing Release acknowledges as much, stating that marketing "is another significant factor" in applying the exemption. Proposing Release at 37,756 (citing *United Benefit*, 387 U.S. at 211).[14]

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[14] It was important in *United Benefit* not merely that the Flexible Fund was being marketed as an *investment* (all annuities are investments to a degree), but that the company was marketing *its own investment management.* United Benefit trumpeted "the experience of United's management in professional investing," the Court observed in the passage cited in the Proposing Release, and thereby "pitched to the same consumer interest in growth *through professionally managed investment*" as mutual funds do. 387 U.S. at 211 & n.15 (emphasis added). Fixed indexed annuities are not marketed on the basis of the companies' investment acumen at all, since—unlike *VALIC* and *United Benefit*—the performance of purchasers' equity-related component has no relationship to the issuer's investment experience. *Compare also* Justice Brennan's concurrence, 359 U.S. at 78, emphasizing that with annuities the purchaser is not "a direct sharer in the company's investment experience," whereas when "the coin of the company's obligation is . . . the present condition of its investment portfolio," "the federally protected interests" underlying the securities laws are triggered.

Despite this, the Proposed Rule takes no account of marketing. Instead, the text of the Proposed Rule effectively designates all fixed indexed annuities as securities even though—as discussed above—companies' descriptions of the products are ordinarily careful to emphasize the guarantee of principal, minimum interest, and other features that further financial stability and security, and promotional materials explain the interest crediting feature and that it is not a means of participating in the stock market. Three representative marketing brochures are attached herewith as Exhibit C. In this respect, too, the Commission has arbitrarily and capriciously purported to rely on Supreme Court cases interpreting 3(a)(8), yet adopted a test that omits factors that the Commission itself recognizes to be "significant."

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In *VALIC* and *United Benefit* the Supreme Court evaluated products whose value depended largely or entirely on the performance of equities and considered multiple factors before determining those products to be securities. The Proposing Release, while paying lip service to the multiple factors considered by the Court, effectively adopts a bright line rule under which an annuity whose value depends at all on the performance of equities is a security instead. That manifestly is not the law.

IV. The Costs of Rule 151A Would Greatly Exceed Its Benefits, And The Rule Would Hinder Efficiency, Competition, And Capital Formation.

The Commission is required by law to consider the effects of the Proposed Rule on efficiency, competition, and capital formation. It is prohibited from adopting "any . . . rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of [this chapter]," and a failure to adequately appraise a rule's effects on efficiency, competition, and capital formation will itself result in invalidation of the rule. Proposing Release at 37,771 (citing 15 U.S.C. §§ 77b(b); 78c(f)); 15 U.S.C. § 78w(a)(2); *see also Chamber of Commerce v. SEC*, 443 F.3d 890 (D.C. Cir. 2006).

The analysis in the Proposing Release of the Rule's costs and benefits—and accordingly, its effect on efficiency, competition, and capital formation—is plainly deficient. The release betrays a profound misapprehension of the scope and extent of existing state regulation of FIAs, and as a consequence claims benefits from SEC regulation that are illusory because the claimed benefits of regulation already are being realized. The result is that the Proposed Rule will increase regulatory costs with no compensating benefit; indeed SEC regulation in this area would frustrate regulatory initiatives that the states and FINRA have recently launched at the SEC's own encouragement. *Compare VALIC*, 359 U.S. at 68 ("We start with a reluctance to disturb the state regulatory systems that are in actual effect, either by displacing them or by superimposing federal requirements on transactions that are tailored to meet state requirements."). *And see* Comment of National Governors' Association (Sept. 4, 2008) (stating the Proposed Rule would "subject[] these products to dual regulation").

In short, FIAs are annuities that are comprehensively regulated by state law, and by exceeding the parameters delineated by the Court and Congress—as shown in the preceding sections—the Proposed Rule will impose excessive, unjustifiable costs that impair efficiency, competition, and capital formation.[15]

A. The Proposed Rule Is Not Efficient.

The Commission is claiming that through this regulation, it will achieve efficiencies. Because annuities already are extensively regulated, however, the Commission cannot claim further efficiencies without a comprehensive consideration of the existing state law regulatory regime, the efficiencies that regime already realizes, and—correspondingly—the respects in which that state regime falls short and further gains may be achieved by the Commission. And yet, to the extent it refers to state regulation at all, the Proposing Release betrays a serious misapprehension of state law requirements. The regulation of annuities may vary from state-to-state, although states increasingly are adopting model rules proposed by industry and regulatory associations. Further, many companies incorporate the practices endorsed by the model rules into their nationwide policies, with the effect that model disclosure and suitability practices are followed by leading providers in all states.

The Proposing Release states that state insurance regulation "is focused on insurance company solvency and the adequacy of insurers' reserves." Proposing Release at 37,762. That is incorrect; state regulation of fixed indexed annuities and other annuities and insurance products is far broader and includes the following:

- <u>Suitability requirements.</u> As discussed more fully below, suitability regulations require an agent to consider the financial profile of a potential purchaser and other factors to determine whether purchase of a fixed indexed annuity would be appropriate.

- <u>"Free Look" periods.</u> Allow a purchaser to rescind a purchase of a fixed indexed annuity, typically up to 15 days after purchase.

- <u>Annuity disclosure requirements.</u> As discussed more fully below, states require significant disclosure about the contents, terms, and conditions of fixed indexed annuities.

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[15] As reflected in the statement by the Court in *VALIC*, existing state regulation of annuities presents questions of federalism that must be weighed by the Commission. The President has directed by Executive Order that when federalism concerns are present, agencies should "encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States" and, "where possible, [agencies should] defer to the States to establish standards." Executive Order 13132, *Federalism*, 64 Fed. Reg. 43,255, 43,256 (Aug. 4, 1999). This Order does not apply to the Commission by its terms, but reflects solemn considerations that the Commission must weigh.

- Advertising laws. States limit the manner in which fixed indexed annuities are marketed. Several states require that companies submit to the responsible agency materials regarding both the product and the product advertising, to monitor whether the product will be marketed in a way that is understandable to consumers. *See, e.g.*, GA. COMP. R. & REGS. 120-2-71-.15 (6) (2008).

- Unfair trade practices and penalties. States regulate deceptive and unfair trade practices, including misrepresentations or misleading statements regarding fixed indexed annuities, and use their enforcement and investigative authority to pursue complaints regarding any type of annuity product. *See, e.g.*, NAIC Model Unfair Trade Practices Act §§ 3-4. Insurance agents can receive penalties or fines for violating certain sales rules as well.

- Market conduct reviews of insurers. Insurers' products and business practices receive a top-down review from state authorities on a periodic basis (usually every three years), giving the state an opportunity to assure itself that products are being designed and marketed within the parameters of state law.

- Agent licensing and training. States require insurance agents to be knowledgeable about the products they sell and the laws that govern those products and to verify the suitability of annuity products for potential purchasers. For example, Iowa requires the completion of a four-hour training course specific to indexed products and that each insurer have a system in place to verify compliance with the training requirement. IOWA ADMIN. CODE r. 191-15.82, 15.84.

Beginning as it does with a misapprehension of the nature and extent of state insurance regulation, the Proposing Release proceeds to claim efficiencies from "extending the benefits of the ***disclosure*** and ***sales practice protections*** of the federal securities laws" to fixed indexed annuities; those protections, the Proposing Release claims, "would enable investors to make more informed investment decisions." Proposing Release at 37,771 (emphases added).

1. State Law Extensively Regulates Disclosures.

With respect to disclosures specifically, the Proposing Release claims that the rule will yield benefits by requiring disclosure of "information about costs (such as surrender charges); the method of computing indexed return (*e.g.*, applicable index, method for determining change in index, caps, participation rates, spreads); minimum guarantees, as well as guarantees, or lack thereof, with respect to the method for computing indexed return; and benefits (lump sum, as well as annuity and death benefits)." Proposing Release at 37,768. Remarkably, however, companies selling fixed indexed annuities *already* disclose this information to potential purchasers. A representative disclosure statement is attached herewith as Exhibit D. For example, the Annuity Disclosure Model Regulation of the National Association of Insurance Commissioners ("NAIC"), which has been adopted by 22 states, requires disclosure of the following on annuity contracts:

- An explanation of the initial ceiling 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;
- The guaranteed, non-guaranteed, and determinable elements of the contract, their limitations, if any, and an explanation of how they operate;
- Periodic income options both on a guaranteed and non-guaranteed basis;
- Any value reductions caused by withdrawals from or surrender of the contract;
- How value in the contract can be accessed;
- The death benefit, if available, and how it will be calculated;
- A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and
- The impact of any rider, such as a long-term care rider.[16]

In many states, the purchaser and insurance agent are both required to sign disclosure statements as a condition of policy issuance. And states that have not yet adopted the NAIC's Annuity Disclosure Model Regulation have alternative, significant disclosure requirements. For example, New York requires that a company selling a fixed-indexed annuity disclose "a statement in bold type to the effect that the [fixed indexed annuity] provides benefits linked to an external equity index and does not participate directly in the equity market." N.Y. INS. LAW § 3209(b)(2)(A). New York also requires disclosure about the equity index formula, participation rates, any caps on the index, minimum guaranteed values, and withdrawal charges. *Id.* California requires explicit disclosure about surrender charges and requires specific disclosures for agents doing business in the homes of seniors. CAL. INS. CODE §§ 789.10, 10127.13.[17]

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[16] Annuity Disclosure Model Regulation Section 5(B).

[17] Although not all model laws and regulations promulgated by the NAIC have been adopted by all states, it is important to note that many model laws are accepted by insurance companies as establishing a floor of conduct for their business across the country. For example, most companies substantively comply with the disclosure requirements of the NAIC Annuity Disclosure Model Regulation even though not every state has adopted that model regulation. So even though some laws vary from state to state, companies that operate nationally tend to follow many of the model laws and regulations for purposes of uniformity and efficiency. And of course, states that have not adopted model regulations often adopt their own requirements to provide comparable protections.

Many states also require insurers to deliver a buyer's guide, written by the NAIC, at the point of sale for fixed annuities, including fixed indexed annuities. *See* Exhibit B. The 9-page guide provides a simple, easy-to-understand description of different types of annuities and explains the components of fixed-indexed annuities, such as indexing method, charges and administrative fees, and withdrawal penalties. The guide also identifies questions a potential purchaser should ask about a fixed-indexed annuity before purchasing the product. Meanwhile, industry groups such as the American Council of Life Insurers ("ACLI") and the Association for Insured Retirement Solutions ("NAVA") have been actively working with the NAIC, FINRA, and the SEC itself to develop short-form, plain English disclosure templates that harmonize and simplify the disclosures provided to annuity purchasers. These templates are expected to establish a uniform format for fixed, indexed and variable annuities, so that consumers receive readable, comparable information across products and companies. These documents pass the "Flesch" test, a test that all annuity contracts must pass which analyzes the document for comprehension by a reader at the 10th grade level.

As FINRA and the SEC itself evidently have recognized in promoting the development of short-form, point-of-sale disclosure materials, materials of this nature most effectively communicate the necessary disclosures to purchasers of annuities. There is no basis to believe that the prospectus required by Form S-1 (the registration statement form on which most fixed indexed annuities would be registered), which has been designed to provide information on a fundamentally different type of financial product and its issuer, will provide more effective disclosures than materials honed from years of experience to communicate information on annuities specifically. These types of prospectuses are in fact too lengthy and complex to function as effective disclosure vehicles for annuity products. Many of its disclosure requirements—such as executive compensation and a description of the company's business—are irrelevant to purchasers of fixed indexed annuities. Nor can a document as lengthy and complex as a prospectus serve as an effective disclosure vehicle at the point-of-sale, which is the point at which disclosures about annuities have been judged to be most valuable. Indeed, a prospectus may very well obscure the information that a potential purchaser of fixed indexed annuities would most benefit from knowing.[18]

In short, the SEC has no basis to claim benefits from applying disclosure requirements that it designed for fundamentally different products to an area where there is a pre-existing

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[18] The Commission's requirements are ill-suited to FIAs in many other ways as well. For example, in a typical securities offering, the company must register a particular dollar amount of securities and pay a registration fee based on that amount. Selling or issuing more than that dollar amount results in selling unregistered securities, with concomitant legal consequences. This dollar amount requirement is generally easily satisfied in a typical securities offering, but would create an obligation on the part of issuers of FIAs to constantly monitor the amount sold versus the amount stated in the registration statement. Also, because FIAs would be offered on a continuous basis, the registration statement would have to be refiled and updated annually in the form of a post-effective amendment subject to Commission review, further increasing the burden.

disclosure system developed—with the encouragement in part of FINRA and the SEC—to effectively impart information about annuities specifically.

2. Sales Practices Are Heavily Regulated By The States.

As to the supposed benefits from SEC "sales practice protections," the Proposing Release cites a single instance of the claimed protections: The application of broker-dealer requirements, it claims, would impose an "obligation to make only recommendations that are suitable." Proposing Release at 37,768. Once again, however, the state regulatory regime *already* imposes extensive suitability requirements. In 2003 the NAIC adopted the Senior Protection in Annuity Transactions Model Regulation, which in 2006 was expanded to purchasers of all ages and re-named the Suitability in Annuity Transactions Model Regulation. The Model Regulation—which already has been adopted in more than 33 states—provides for robust standards and procedures to ensure that the "insurance needs and financial objectives of [purchasers or annuities] at the time of the transaction are appropriately addressed." The Regulation's protections exceed those in FINRA suitability Rule 2310 by imposing a supervisory role on insurers and requiring that, among other things, insurers endeavor to obtain information on consumers' financial status, tax status, investment objectives, and other information appropriate for making informed recommendations to the consumer. *See* NAIC Suitability in Annuity Transactions Model Regulation § 6(B), (D). In May 2007, FINRA jointly released a statement with regulators from North Dakota, Iowa, and Minnesota in support of the NAIC Model Annuity Suitability Regulation; the statement is the first significant initiative of the Annuity Working Group, which was established by the Minnesota Department of Commerce and FINRA following the May 2006 Annuity Roundtable to evaluate the regulatory standards governing annuities.

Once again, moreover, states have adopted suitability requirements separate from the NAIC model rules. Florida, for example, recently enacted laws requiring agents to have an objectively reasonable basis "for believing that the recommendation [for a product] is suitable for the senior consumer based on the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs." FLA. STAT. § 627.454(4)(a) (2008). In making the suitability determination, the agent must gather relevant information from the senior consumer. *Id.* § 627.4554(4)(b).[19]

Importantly, these state suitability requirements have—unlike FINRA requirements—been tailored to annuities and annuity-like products specifically, which present different suitability questions than securities. A consumer's suitability to purchase a security is primarily a matter of *risk tolerance*—*i.e.*, the consumer's inclination and ability to take investment risk. Suitability for an annuity, on the other hand, is seen as concerned primarily with *liquidity*, that is,

[19] A review of actual responses to these suitability forms refutes the unsubstantiated assertion in the Proposing Release that "[i]ndexed annuities are attractive to purchasers because they promise to offer market-related gains." *Id.* at 37,752. A sampling by some Coalition members of recent suitability forms reveals that the large majority of purchasers acquire fixed indexed annuities for stability of premium.

whether the initial payment and flow of income provided by the annuity are appropriate for the purchaser. In short, the suitability requirements that the Proposing Release identifies as a benefit of the rule are unnecessary in light of comprehensive state requirements, and are a poor fit in any event with the needs of purchasers of annuities. Sample suitability statements are attached as Exhibit E.[20]

In addition to the measures identified above, further enhancements to state requirements are underway. State regulators have charged the Suitability in Annuity Sales Working Group of the NAIC's Life and Annuity "A" Committee with developing uniform guidelines for agent training, supervision, and monitoring to further protect consumers from improper sales and marketing practices. The "A" Committee is also considering a model NAIC regulation to prohibit the misleading use of senior-specific certifications and designations by agents in the solicitation and sale of life insurance or annuity products. And, the ACLI is developing Suitability Monitoring Standards for use in implementing the supervisory procedures in the NAIC Suitability Model Regulation. These Monitoring Standards build upon SEC and FINRA rules and guidance on supervisory "best practices," including the recommendations in the *Joint SEC/NASD Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products* (June 2004).

Yet another state initiative not accounted for in the Proposing Release is the Interstate Insurance Product Regulation Commission ("IIPRC"), an interstate compact that allow insurers in participating states to make one product registration filing—via an electronic filing system—to seek approval of their product in all participating states. *See* www.insurancecompact.org. The IIPRC adopts uniform product standards and assists the member states in enforcing those standards. The IIPRC was adopted in March 2004 and became operational in May 2006; 33 states have already joined the IIPRC, and five others have legislation pending to join. The IIPRC has adopted standards regarding registration of fixed indexed annuities including, among other things, the readability of contract forms presented to purchasers. *See* www.insurancecompact.org/rulemaking_records/080530_Ind_Imm_NonVar.pdf.

Finally, and as noted, state laws provide additional protections beyond the regulation of disclosure and sales practices that the Commission claims as benefits of the Proposed Rule. Annuity writers are subject to market conduct examinations by the insurance regulator in their state of domicile and in any other state where they do business. These wide-ranging exams focus increasingly on product suitability. Annuity writers are also subject to state unfair trade practice statutes which prohibit the misrepresentation of product terms and conditions, and are within the jurisdiction of the state attorneys general, several of whom have brought high profile

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[20] There are a number of features of FIAs that can make them particularly appropriate for senior citizens. For example, FIAs help avert risk, protect against inflation, provide tax deferral advantages, protect assets from creditors and fraud, avoid probate delays, and, in some cases, compensate purchasers for nursing home care. *See* September 10, 2008, Statement of Mark Meyer, Ph.D., at 7-12 (attached as Addendum hereto).

enforcement cases alleging unsuitable sales and replacements of fixed and indexed annuities to seniors.[21]

For all of the reasons identified above, the measures that the Proposing Release claims as benefits are in fact protections that are currently provided—or are exceeded—under existing law. The Rule would only impose further costs and burdens on efficiency with no compensating benefit, adding on top of existing state laws an unnecessary, largely duplicative layer of federal requirements that were developed around securities generally and have not—like this extensive state regulation—been tailored to annuity products and purchasers particularly. The Proposing Release estimates that registration requirements alone would impose $82 million in additional costs. Proposing Release at 37,770. In fact the costs will be much higher due, for example, to the costs to insurance agents who do not currently have a securities license. The cost to an individual agent of registering *and operating* as a broker-dealer would be prohibitively expensive. According to Schedule A of the FINRA bylaws, registration and examination fees can be up to $4,000. In addition to these fees, the legal costs of registering and applying for membership with FINRA, the cost of completing the necessary forms, and the costs of ongoing compliance could require a "start-up" cost of $25,000 and between $50,000 to $100,000 annually to maintain the registration. Agents would also have to meet CLE requirements, pay licensing fees, and buy study materials or enroll in a course to pass licensing examinations.

In light of these costs, evidently, the Proposing Release concedes that individual and small distributors not currently registered as broker-dealers will likely forgo registration and enter into networking arrangements with registered broker-dealers. *Id.* at 37,772. This alternative will also be inordinately expensive, however, because under current industry practice

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[21] The Release states that growth in the sale of fixed indexed annuities has been accompanied by an increase in complaints of abusive sales practices. No factual support is provided for that statement, and the Proposing Release simply errs in stating that "concerns about potentially abusive sales practices and inadequate disclosure have grown." Proposing Release at 37,755. In fact, NAIC data reflect that fewer "closed confirmed" complaints have been made regarding FIAs than either variable annuities or fixed-rate annuities. The Proposing Release also relies on a statement the former president of NASAA made regarding fixed investment annuities and senior investment fraud, *id.* at 37,755, but NASAA has refused requests by Coalition members that it provide information that supports these claims. (NASAA, unlike the NAIC, does not maintain a system for recording complaints about annuities products.) The reliance of the Proposing Release on the joint examination of free lunch seminars, *id.*, is also misplaced. The "free lunch report" examined broker-dealers' compliance with the securities laws in "free lunch" seminar sales. The report did not examine independent insurance agents, who are the principal sellers of fixed indexed annuities. Within the report, moreover, fixed indexed annuities are mentioned only three times, with the report's dominant focus being on mutual funds, real estate investment trusts, variable annuities, private placements of speculative securities—such as oil and gas interests—and reverse mortgages. The report simply did not demonstrate that fixed indexed annuities presented a particular problem or were even extensively offered at "free lunch" events.

the agent will *still* bear expenses that include examination fees, state registration fees, and possibly a pro rata share of the associated broker-dealer's increased compliance costs, such as costs associated with capturing and supervising electronic communications pursuant to Exchange Act rule 17a-4(b)(4) and FINRA Rule 2210. And of course, the agent will have to share a portion of his commissions with the registered broker dealer. Altogether, one industry commentary estimates that total costs of the rule will exceed $700 million. Jack Marrion, *The Proposed Rule Will Sock It To Index Annuity Distributors*, National Underwriter, *available at* http://www.lifeandhealthinsurancenews.com/cms/nulh/Weekly%20Issues/issues/2008/29/Focus/L29cover2.[22]

The Commission's failure to address the extensive state regulation in this area contrasts notably with the numerous recent occasions in which it has recognized the importance of avoiding duplicative regulatory and enforcement systems. In adopting Regulation R, for example, which exempts banks from broker-dealer registration for certain activities, the Commission actively "sought to minimize" duplicative regulatory burdens and to defer to banking regulators. *Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks*, 72 Fed. Reg. at 56,514, 56,549 (Oct. 3, 2007). Currently, the Commission is requesting comment on a program to reallocate responsibilities for surveillance and detection of insider trading among various securities exchanges, again to avoid "regulatory duplication [that] would add unnecessary expenses." *Program for Allocation of Regulatory Responsibilities*, 73 Fed. Reg. 48,248, 48,248 (Aug. 18, 2008). And, in another recent change announced with much fanfare, the Commission will exempt foreign private issuers from registration requirements of Section 12(g) of the Exchange Act if, among other things, non-U.S. disclosure documents are posted on the company's website. *See Exemption from Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers*, 73 Fed. Reg. 10,102, 10,105 (Feb. 25, 2008). In each of these cases, the Commission crafted its proposal in light of the existing regulatory regime for the particular product or practice, with the objective of avoiding or eliminating unnecessary regulatory duplication. The failure to do so here is further evidence that the Commission has proceeded in a precipitous, arbitrary, and capricious manner.

B. The Proposed Rule Would Impair Competition.

The assessment in the Proposing Release of effects on competition is, like its efficiency analysis, flawed and incomplete.

The Release speculates that enhanced disclosure requirements and the removal of regulatory uncertainty regarding the status of fixed indexed annuities under the securities laws will encourage more broker-dealers and insurers to enter the market. Proposing Release at 37,769. That is mistaken. As an initial matter, the "regulatory uncertainty" described by the

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[22] Several comments to the Proposed Rule have cited this analysis. *See, e.g.*, Comment of Courtney A. Juhl (Aug. 15, 2008); Comment of Bruce E. Dickes (July 16, 2008); Comment of Dane Streeter (July 16, 2008); Comment of Michael A Harness, Jr. (July 10, 2008); Comment of Andrew Unkefer (July 7, 2008).

Commission is a makeweight; the market for fixed indexed annuities is robust—as the Proposing Release observes elsewhere—and any "uncertainty" regarding the legal classification of FIAs is as easily dispelled by the Commission *rejecting* the Proposed Rule as it is by adopting a rule that could draw legal challenge due to its plain tension with Supreme Court precedent.

With respect to the possibility that more broker-dealers and insurers might enter the market, all evidence points to the contrary, as the Proposing Release admits could be the case:

> If some insurers determine to cease issuing indexed annuities rather than undertake the analysis required by Proposed Rule 151A and register those annuities that are outside the insurance exemption under the Proposed Rule, there will be fewer issuers of indexed annuities, which may result in reduced competition. Any reduction in competition may affect investors through potentially less favorable terms of insurance products and other financial products, such as increases in direct or indirect fees.

Proposing Release at 37,770. Currently, more than 90 percent of fixed indexed annuities are distributed by independent insurance agents, rather than by broker-dealers. Advantage Group Associates, Inc., Advantage Index Sales & Market Report 4th Quarter 2007 Part 1, at 10 (2008). Many of those independent insurance agents lack the securities licenses that would be required if fixed indexed annuities were to become subject to the securities laws. If the Proposed Rule is adopted, a significant percentage of these agents must be expected to cease selling FIAs after concluding that the cost of being licensed and subject to additional regulation as broker-dealers is not worth the benefits of selling fixed indexed annuities. Indeed, one recent report shows that this already is the trend in the industry, with more people who sell insurance products dropping their securities licenses than acquiring them, citing, among other things, the costs of compliance and continuing education to maintain licenses for products that represent a small portion of the agent's portfolio.[23] The Proposed Rule will exacerbate this trend, thereby constraining consumers' choices and increasing prices by reducing competition and raising costs among those who do remain in the market.

C. The Proposal Would Not Promote Capital Formation.

Regarding capital formation, the Proposing Release claims only that benefits will result from "improving the flow of information between insurers that issue indexed annuities, the distributors of those annuities, and investors." Proposing Release at 37,771. No "improvements" can be claimed, however, without delineating where the states' current, highly-developed means for providing information fall short; the respects in which a system designed to govern the "flow of information" about securities will improve on the informational practices and requirements tailored specifically to products with the features of an annuity; and how those supposed benefits will exceed the costs that undeniably they will impose.

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[23] *Practice Management Support: Giving Producers What They Need Industry Report* 9-10 (LIMRA 2008).

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The Commission lacks the legal authority to regulate fixed indexed annuities and doing so would be a poor policy decision that gives short-shrift to extensive state regulatory efforts. The Proposed Rule would impose substantial, needless costs on those who sell and buy these valued products, and cannot be reconciled with the Commission's obligation to give due weight to the effects of its actions on efficiency, competition, and capital formation.

V. The Proposed Rule Would Impose Unjustified Costs On Small Business In Particular.

Under the Regulatory Flexibility Act, the Commission is required to prepare a "regulatory flexibility analysis" unless it can certify that the Proposed Rule will not "have a significant economic impact on a substantial number of small entities." 5 U.S.C. §§ 603(a), 605(b). The Commission has made no such certification—it has prepared an initial regulatory flexibility analysis instead—and thereby tacitly concedes that the Proposed Rule would in fact have a significant economic impact on small businesses and the men and women who own them and work for them. Proposing Release at 37,771-73.

In fact, the Proposed Rule understates the extent to which the costs identified in Section IV above would fall on small businesses in particular. The Release states "that there may be small entities among distributors of indexed annuities" and that the Rule would affect those "who are not currently parties to a networking arrangement or registered as broker-dealers." Those distributors, the Release theorizes, would opt to contract with registered broker-dealers in order to continue distributing FIAs. This would impose "legal costs in connection with entering into a networking arrangement with a registered broker-dealer, as well as ongoing costs associated with monitoring compliance with the terms of the networking arrangement." Proposing Release at 37,772.

The true costs would be higher as just shown: If the agents who currently sell FIAs forgo registration as broker-dealers, as they are likely to do, then by contracting with broker-dealers they would incur not only legal costs and monitoring costs, but also have to share commissions that they earn from FIAs. That would function as an additional incentive not to offer the product, increasing the likelihood that the effect of this Proposed Rule would be to seriously impair the existing distribution channels for fixed indexed annuities, curtailing the products' availability, and increasing their cost.

Conclusion

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

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ADDENDUM

Statement of Mark F. Meyer, Ph.D., Regarding SEC Proposed Rule 151A

I am a Vice-President and co-leader of the Insurance Economics Practice at CRA International. I received a Ph.D. in Economics from the University of Michigan in 1987, with concentrations in industrial organization, econometrics, and applied microeconomic theory. Since then, as detailed in the attached *curriculum vitae*, I have been employed at a major law firm and several economic consulting firms applying economic, financial and quantitative theory and practice to a range of business and public policy issues.

I have been requested by the Coalition for Indexed Products to review a new rule proposed by the Securities and Exchange Commission[1] that would likely classify a certain type of annuity, denoted "indexed annuity"[2] in the SEC's materials, as a financial security subject to regulation by the SEC. This Proposed Rule 151A has many implications for a wide range of parties and will undoubtedly elicit numerous comments covering a wide range of issues. In this statement, I address three aspects where I see deficiencies in the analysis supporting the Proposed Rule presented by the SEC: (1) the definition or characterization of investment risk, (2) the risks and returns associated with fixed indexed annuities compared with traditional fixed annuities, and (3) the suitability of fixed indexed annuities for seniors.

I. The Characterization of "Investment Risk" in the Proposed Rule

The definition or characterization of "risk" appears to be central to the SEC's analysis regarding the Proposed Rule. It is important to be clear regarding what constitutes the kinds of risk important to FIA owners and to distinguish this from the kind of risk to which the Proposed Rule 151A is directed.

The fundamental meaning of "risk" has undergone a slow evolution over time from its early Greek (Plato, 360 B.C.) and Latin (Tacitus, 109 A.D.) roots, but in large measure it has remained unchanged, focusing primarily on disaster, peril, danger, and hazard. Its etymology is discussed elsewhere (Cline, 2004). Fast forward 2,400 years and we find its primary meanings continue to define risk by reference to undesirable outcomes – the potential for loss. Today, the most common definitions of risk overwhelmingly remain associated with the existence of hazard, danger, peril, exposure to loss, pain, injury or destruction (e.g., *Webster's Revised Unabridged Dictionary*). In the *Merriam-Webster's Dictionary of Law*, the meaning is narrowed to: possibility of loss or injury; liability for loss or injury if it occurs; the chance of loss; and uncertainty with regard to loss. In the medical field, risk is associated with: the possibility of suffering a harmful event; a factor or course involving uncertain danger (*American Heritage Stedman's Medical Dictionary*); possibility of loss, injury, disease or death (*Merriam-Webster*

[1] Proposed Rule 151A under the Securities Act of 1933 (the "Proposed Rule").

[2] I will use the term "fixed indexed annuities," (or "FIAs") to refer to this product subsequently.

Medical Dictionary). Indeed, in the lexicon of 30 other languages, from Arabic to Swedish, the predominant meaning of the concept of "risk" is associated with the chance of something bad happening.

In the financial economics community, however, some have altered the meaning of risk to incorporate the potential for uncertain gain as well as loss – "the chance that an investment's actual return will be different than expected" (*Investopedia*). Broad definitions of this type have been criticized because, as knowledgeable investors know, for almost all securities the chance that their realized return will be different from the expected return approaches 100%. This is because the "different-from-expected" definition focuses only on the probability ("frequency" in insurance parlance) without regard to the magnitude ("severity" in insurance parlance) of the deviations from expected return. The focus on loss, however, remains central to the idea of investment risk for many in the finance community, as the entry in *Barron's Dictionary of Finance and Investment Terms 3rd Ed.* indicates where risk is defined as the "measurable possibility of losing or not gaining in value."

To the extent that some in the field of financial economics continue to use a characterization of investment risk that incorporates a consideration of upside potential as well as downside loss (both weighted equally), while the understanding of risk across other disciplines (as well as in common usage) focuses on bad outcomes, it is instructive to recognize how this unique financial economics definition came about and why it is not appropriate in most circumstances.

The early measures of investment risk clearly focused on loss or lower returns. For example, Irving Fisher (1906) characterized risk as "the chance of earnings falling below the interest-paying line." The economic literature made a distinction between risk and uncertainty in 1921 with the work of Frank Knight, who associated risk with deviations from the expected outcome where the probabilities and magnitudes are known, and uncertainty, where the probabilities and magnitudes are unknown (Knight, 1921). With the introduction of modern portfolio theory (Markowitz, 1950, 1952), the risk inherent in financial securities began to be measured by the calculation of the standard deviation of returns. This turn of events was motivated primarily by its mathematical tractability, although Markowitz admitted (1959) that a much better treatment of risk would focus on its semi-variance (downside variance).[3] Computers were in their nascent stages in those years and could more easily calculate the (complete) variance of a distribution rather than work through all the observations in a distribution to focus only on the downside risk. Hence, the association of the notion of risk with the mathematical calculation of variance (and standard deviation) was a compromise that at the time could be justified in terms of computational ease and efficiency, at the expense of a possible distortion of the concept of risk.

The use of the standard deviation as a measure of financial risk was embraced by Sharpe's Capital Asset Pricing Model (1964)[4] and, although today's computers can easily handle

[3] Markowitz received the Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel ("Nobel Prize in Economics") for his work in financial economics in 1990.

[4] Sharpe shared the 1990 Nobel Prize in Economics with Markowitz (and Merton M. Miller).

downside risk measures, two-sided measures of risk (incorporating upward and downward movements with equal weights) continue to be used in some quarters. Yet there are only two conditions under which these simple measures of two-sided risk (such as variance or standard deviation) correlate perfectly with downside risk, which captures what is more popularly considered risk: a Gaussian (i.e., "normal") distribution of rates of return, or a quadratic utility function for investors. However, there is now extensive economic literature showing that across almost all classes of securities, rate of return distributions are anything but Gaussian, and that quadratic utility functions are anything but rational and have been highly criticized by many of the most eminent economists of the last 50 years (Hicks, 1962; Arrow, 1963; Borch, 1969; Feldstein, 1969; Hirshleifer, 1970; Mao, 1970; Rothschild and Stiglitz, 1970; Hakansson, 1972).[5] It is noteworthy that in his seminal paper Markowitz (1950, p. 326) proposed to condense probability information in terms of moments and realized that the higher statistical moments may be relevant. Nevertheless, he limited himself to the mean and variance for the purposes of his analysis.

Today modern finance has progressed beyond those rudimentary risk measures and more sophisticated risk measures focus on downside loss, or the ratio of upward potential to downside loss. These measures of risk that have been developed during this "post-modern portfolio theory era" (Rom and Ferguson, 1994) are closer to the original concept and common understanding of risk that look toward the chance and magnitude of bad outcomes. "Upside risk" measures have not gained traction, except as potential reward measures in relation to loss measures (Sortino *et al*, 1999). Perhaps the best-known measure of downside risk in the investment literature is Roy's Safety First criterion (1952), which measures the chances of the investment value falling below some predefined disaster level. Other popular measures of risk aversion (which incorporate risk into utility theory) were developed by Arrow (1964, 1970) and Pratt (1964), both of which weigh losses more heavily in utility functions displaying any risk aversion.

Financial economists have since designed other more sophisticated measures to remedy the deficiencies associated with two-sided (and symmetric) risk measures such as standard deviation, variance and beta. These newer measures take into account the asymmetries and non-normality that typify asset returns. Early efforts focused on semi-variance rather than variance (Mao, 1970 and Markowitz 1959, 1970) as a measure of risk on the grounds that semi-variance concentrates on reducing losses, as opposed to variance which considers gains, as well as losses, as undesirable. Later risk measures took into account the entire probability distribution of returns. Having its origins in "majorization theory" (Hardy *et al.*, 1934) the extensive literature that treats investment decision-making by considering the entire distribution of returns is known as stochastic dominance (Quirk and Saposnik, 1962; Fishburn, 1964; Hadar and Russell, 1969; Hanoch and Levy, 1969; Levy, 1992; and Vickson, 1975, 1975, 1977; Whitmore and Findlay, 1978). Later works of Bawa (1975, and many subsequent works authored or co-authored by him), Fishburn (1977), Levy (2006) and others have refined the treatment of risk by focusing on the lower-partial moments of the distributions of returns. These risk measures return attention to

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5 Arrow and Stiglitz received the Nobel Prize in Economics in 1972 and 2001, respectively.

the loss measures that are consistent with popular understandings of risk. Examples of recent risk measures that take into account asymmetries in the return distribution and emphasize loss include the Sortino Ratio (Sortino and Van der Meer, 1991) the Leland measure (Leland, 1999), value-at-risk, conditional value-at-risk measures, and robust, "fat-tailed" measures of downside risk (Dutta and Perry, 2006). It is these measures that represent the state of art on risk measurement in the field of financial economics.

The use of models that emphasize the importance of investor loss aversion is confirmed by research in the emerging field of behavioral finance where such loss aversion behavior on the part of investors is clear and compelling. As stated by Sortino *el al.* (1999), "recent research in the behavioral finance area describes how investors want to behave. In general, investors do not seek the highest return for a given level of risk, as portfolio theory assumes. According to Shefrin and Statman (1998) investors seek upside potential with downside protection."

Given this backdrop of the development of concepts and measures of risk in the financial economics world, let me return to consider the core of the SEC's rationale for the Proposed Rule, which appears to be that: "When the amounts payable by an insurer under an indexed annuity are more likely than not to exceed the amounts guaranteed under the contract, the majority of the investment risk for the fluctuating, equity-linked portion of the return is borne by the individual purchaser, not the insurer." There are several problems with such an *ad hoc* standard, both in terms of its inconsistency with any accepted economic theory, its debatable calculation, and its perverse incentives.

As others have explained, FIAs are annuity contracts where purchasers receive a credit based on the positive performance of one or more equity or fixed income indexes (such as the S&P 500 Composite Stock Price Index™ or the Lehman Brothers Bond Index™). As a consequence of this structure, FIAs do not incur negative returns when the underlying equity or fixed income index for the fluctuating part of the return declines. FIAs do have minimum guaranteed values that increase each year <u>and</u> they have the <u>potential</u> to have higher (and only higher) values should the indexes move upward.

With regard to its consistency with economic theory, it is clear that the concept of risk permeating the Proposed Rule 151A analysis is focused on what economists have dubbed "upside potential," and not the "downside threat" – at least from the consumer's point of view. In other words, the SEC's stated concern appears to ignore the elimination of downside risk inherent in the FIAs and focuses solely on the uncertain amount of any upside potential to the consumer. This is a curious and improper way of looking at the situation. The individual FIA purchaser does not suffer any downside investment risk. That downside investment risk is entirely upon the shoulders of the guarantor, which in this case is the insurer. Essentially, the consumer has a contract with upside potential and a guarantee of principal. The insurer is "short" this position and the consumer's upside can be a potential loss to the insurer if it does not take steps to offset this risk. There are two general approaches that an insurer takes to meet its guarantees, which include providing a portion of the upside movement in the indexes to which the return formula is linked. The first approach is hedging through dynamic trading.

Under the dynamic trading approach, a portion of this risk can be hedged by the insurer through dynamically synthesizing options by taking multiple positions (typically seven) in index futures each trading day and rebalancing them on a daily basis, or more often, as necessary, according to a complex algorithm. In addition, this dynamic hedging approach requires the purchase of multiple interest rate caps, combined with the sale of interest rate floors, and a managed, laddered portfolio of zero-coupon bonds in order to meet its guarantees. Because there is no perfect hedge available, the insurer incurs much basis risk and uses its own capital to secure its promised returns. For a typical portfolio of FIAs, such an approach would entail more than 25,000 trades over a 15-year period. Compare this to the single payment of the consumer and it is apparent which party is shouldering the greater part of the investment risk!

An alternative approach to hedging the investment risk contained in FIAs is to enter into private contracts (because traded options do not adequately cover the contractual risks in FIAs) with third parties willing to manufacture and write options. Such specialized contracts are tedious to create and involve counterparty risk, as well as frequent updating as experience emerges with lapses, exercise of policy options, morbidity and mortality. The insurer may attempt to hedge a portion of the counterparty risk through individualized credit default swap contracts, or it may absorb the downside loss potential on its own by using its surplus capital. In either case, the basis risk arising from the unhedgeable elements of the FIA will have to be absorbed by the insurer.

A contract that offers the greater of a minimum guaranteed return each period or an indexed return will have a probability approaching 100% over time of generating a cumulative return that is greater than that guaranteed, provided that there is a "ratcheted" return provision in the contract. The SEC did not state that the calculation of its "more likely than not" threshold was a monthly, annual, or contract lifetime feature. The ratchet feature is common in almost all FIAs, which means that the consumer locks in any gains over multiple periods. A "risk measure" that categorizes virtually everything as being "more likely than not to exceed the amounts guaranteed under the contract" is analytically meaningless in such circumstances.

The SEC's Proposed Rule 151A would likely create perverse incentives to insurers that may wish to avoid yet another layer of regulation. If an insurer wants to be "under the wire" for regulatory purposes, it need do nothing more than adjust the parameters of its contracts going forward to ensure that nothing more than the minimum guaranteed return is ever credited. It is difficult to fathom that the intention in giving the SEC oversight in the regulation of securities was to protect consumers from any "upside potential" or to motivate financial institutions to adjust contracts so that consumers could not benefit from higher than minimum guaranteed returns.

Understanding the structure of FIAs makes two points immediately obvious. First, as discussed above, the only "investment risk" that the FIA purchaser accepts for the fluctuating portion of the FIA return is the "risk" of higher returns. The insurer either absorbs or hedges against the costs it will incur occasioned by the upward movement in the relevant indexes. Second, contrary to the presumption embedded in the analysis associated with the SEC's Proposed Rule 151A, the insurer retains significant amounts of "investment risk" in providing FIAs to consumers. The

Both FIAs and traditional fixed annuities guarantee payments of premium and a positive return on premiums paid (reduced by any applicable withdrawal charges). The difference, of course, is that in the traditional fixed annuity product the purchaser typically will receive only the amount that is guaranteed, and there is no variation or dispersion over time in that amount. In the FIA, on the other hand, the amount the purchaser will ultimately receive may vary with the experience of the underlying index, which is uncertain at the time of purchase, and will exhibit variation or dispersion over time. The downside movement in returns, however, is truncated at zero. FIAs, therefore, have a variation in (expected and, most likely, actual) returns higher than that associated with traditional fixed annuities. The variation in the FIA returns is the "price" of obtaining the upside potential arising from the index experience.

Although FIAs are, of course, not guaranteed to return more than traditional fixed annuities, a number of actuarial simulation studies performed in the industry to investigate the index features in FIAs have found that the average annual credits will have an appreciably higher value than for the comparable fixed-rate annuity due to the typical historic characteristic of equity index increases exceeding the risk-free rate that is embedded in option pricing.

III. The Suitability of Annuities, Including FIAs, for Seniors

There are a number of reasons why annuities, including FIAs of the type covered by the Proposed Rule, are suitable for senior citizens. American senior citizens face a substantial risk that the SEC cannot regulate and that annuities, including FIAs, can alleviate – the risk of outliving their assets. In the following paragraphs I will list a number of benefits that annuities, including FIAs, offer consumers. One likely effect of adopting Proposed Rule 151A is that some sellers of traditional fixed income annuities would no longer be able to also provide FIAs to their consumers. For these sellers and their customers, the effect of adopting Proposed Rule 151A would be to limit their ability to craft retirement income strategies that benefit from the upside in the equity or fixed income markets.

1) Risk Aversion and Age

Many scholarly studies and population surveys have documented that the elderly have less tolerance for financial risk than younger people. Intuitively this makes sense as seniors have very limited ability to rebuild their financial nest egg. This is particularly true for single women.[6] For example, a 2007 survey of the elderly revealed that 28% were not willing to place their assets in any investment that could generate negative returns over any given year (Matthew Greenwald, 2007, p. 34). Annuities and certificates of deposit both provide protection against loss of principal throughout their accumulation periods; few other assets accomplish this feat. Some FIAs even allow annuitization any time after the first anniversary, and allow annual or monthly withdrawals, typically up to 10% per year, without

[6] An extensive bibliography of findings regarding the relative risk tolerance of men versus women is provided in Babbel (2008).

subjecting the owner to any surrender penalties. This is more than twice the withdrawal rate an individual can get through bond ownership in today's yield environment, without invading principal, and more than six times the level an individual can get through stock ownership at today's dividend levels, without being subject to market price losses. If an individual invades principal, she is subject to reverse dollar-cost-averaging, which means that she will have to sell more bonds or stocks when the market is down in order to achieve a particular income objective, and then will have fewer bonds or stocks to ride the market back up. The losses from reverse dollar-cost-averaging have proven to be substantial over the three to four business cycles that typically occur during a retirement phase. The losses are particularly pronounced if the individual enters into retirement at the beginning of a downward cycle. With annuity withdrawals or payouts, the individual is not subject to such risk. Based on historical figures, money that is expected to last more than 30 years in a stable market can become extinguished in fewer than 14 years if an individual is holding a portfolio of bonds (60%) and stock (40%) at retirement, or in fewer than 7 years if one has all of their savings in stock.

Deferred annuities, including the FIA contracts at issue in the Proposed Regulation, may be attractive vehicles for risk-averse or inexperienced investors. For inexperienced investors, or those unwilling or unable to extend the effort to trade their own portfolios, traditional and indexed annuities offer a low-risk and worry-free investment alternative. This is supported by the 2007 NAVA survey on Investment Risk and Guarantees, which indicates that large "segments of older Americans are open to products, such as annuities, that allow them to minimize their fears while investing in the stock market" (Matthew Greenwald, 2007, p.10).

Indexed annuities allow for some equity or fixed income market upside exposure, yet are suitable for senior citizens due to the embedded guarantees. The purchase of an indexed annuity can help to achieve a more remunerative investment strategy without subjecting invested funds to the losses associated with market downturns.

2) Protection from Outliving One's Assets

The need to protect against outliving one's assets has increased in recent years. The erosion of confidence in Social Security promises and adequacy of benefits, the accelerating demise of corporate pension programs,[7] the rising costs of healthcare, the erosion of retirement income occasioned by inflation, and an increasing American life expectancy have all contributed to a greater emphasis on private saving for retirement (Munnell, 2003).

As annuities were first developed to ensure that policyowners did not outlive their assets (Poterba, 1997), an annuity can be an important part of a retirement plan. A fixed annuity

[7] The number of defined contribution plans has risen from approximately 341,000 plans in 1980 to approximately 653,000 plans in 2004. Conversely, the number of defined benefit plans has decreased from approximately 148,000 plans to 47,000 plans over the same period. Refer to the "Facts" from Employee Benefit Research Institute, June 2007.

enables the annuitant to receive a steady, monthly payment during the annuity's liquidation phase for a desired amount of time, typically for the duration of the annuitant's life. A 2007 NAVA survey on Investment Risk and Guarantees indicated that guaranteed lifetime income is important to older Americans. "A large majority (82%) of older Americans feel that investments with guaranteed lifetime payments provide supplemental income and peace of mind" (Matthew Greenwald, 2007, p. 8).

One particular segment of the population at risk to outlive their assets is women. Married women generally outlive their husbands by six years (Babbel, 2008). Also, older women are 50% more likely than older men to live in poverty. A New York Life Insurance Company survey conducted in March 2006 found that "only 54% of women expressed confidence that they would be able to maintain their lifestyle after their husband's death" (Babbel, 2008, p.6). These data points emphasize that certain profiles within the population rely on products that provide guaranteed income and that can help offset increased medical expenditures.

Apart from inflation-indexed Social Security payments, many elderly people may be living on fixed incomes from pensions, immediate annuities, and interest income. It is impossible for economists to forecast inflation over the 20-35-year typical horizon of retirement with any accuracy, yet the elderly are especially vulnerable to the cumulative effects of inflation on the purchasing power of their fixed income.[8] Having one or more deferred annuities, particularly an annuity that increases in value as an index increases, allows a senior to continue accumulating assets in a safe (and tax-efficient) manner, so that when the need arises, it is available to be partially or wholly annuitized to supplement one's income.

Some of the FIAs under consideration for inclusion in the Proposed Rule offer an annuitant the ability to convert the contract to one of the settlement options including income for a specified period, for their lifetimes, and other annuitization options anytime after the first contract year.

3) Benefits from the Upside Potential of Equity or Fixed-Income Markets

One of the major attractions specific to FIAs is the ability of the purchaser to benefit from some of the upside potential of the equity or fixed-income markets while simultaneously eliminating all of the downside exposure to those markets and assuring a guaranteed stream of payments. Most seniors hope that they will have many years of enjoyable retirement. The benefit from the possible upward movements of the equity market (and elimination of the downward movements) is an attractive feature of FIAs for seniors looking at a long retirement period.

[8] For example, over each ten-year period since America abandoned the gold standard in January of 1972, inflation has eroded the value of fixed income payments by anywhere from 21% to 53%.

Seniors can, of course, get exposure to equity markets by investing in a well-diversified portfolio of mutual funds. Such a tactic, however, exposes them to drops in stock prices and the ravages of reverse dollar-cost-averaging described above. The more sophisticated can mitigate this risk by purchasing options or actively managing their portfolio(s). This approach, however, incurs costs and few (if any) seniors have the ability to manage their portfolios adequately over a long retirement period. Purchasing an FIA hands the responsibility for hedging against a downturn in the index to professional investors and, more importantly, the FIA provider guarantees that the purchaser never suffers the loss.

4) Benefits of Stability and Guaranteed Rates of Return

Recent research has shown that senior citizens generally earn about 2% less per year, on average, on their stock and bond portfolios than people below 55 years in age, even after adjusting for the riskiness of the portfolios (Korniotis and Kumar, 2007). This can have a large cumulative negative effect upon the amount of capital available to provide income for one's later years, and when people compare annuity returns to what can be earned in alternative investments they need to account for this fact. With an FIA, one gets the benefit of more stable asset growth than that available through many other methods, with protection against negative returns. Few, if any, individuals can replicate guaranteed rates of return of an FIA over a long period of time without taking notable downside risk.

5) Nursing Home Care

One of the risks of the elderly is incurring the expense of nursing home care. The annual cost of a private room averaged $75,000 in 2007. Consider an elderly person who is getting by with about $37,500 per year on a fixed income. When the need for nursing home care arises, such a person may not be able to afford it without going onto the welfare rolls, and would have to seek Medicaid and whatever levels of care such a program would support. Medicare does not cover such expenses. A person could plan for this through long-term care insurance, if there was enough foresight to have purchased it long prior to the need. However, the person may not wish to spend the money on insurance coverage that may never be needed. A person could purchase a step-up immediate annuity at the onset of retirement at 65 years of age, which would increase payments from $37,500 per year to $75,000 at some pre-specified date, such as 85 years of age. But what if the person guesses wrong about the age that such coverage will ultimately be needed? And what if the person guesses wrong about the amount that such coverage will ultimately cost 20 years later? And what if the person never needs the coverage, having died before nursing home care was required? A deferred annuity, including one that provides benefits associated with the upside movement in equity or fixed income markets, provides a good way to hedge against these risks.

Most FIAs provide a nursing care provision that allows between 20% and 100% withdrawals without any penalty, regardless of when the need arises after the first anniversary of the policy. Many FIAs also have a terminal illness rider available. A person can deduct the amount that is greater than 7.5% of her adjusted gross income, which would typically be the case for people undergoing nursing home care. The costs of qualified long-term care services can generally be included as medical expenses. Accordingly, the money placed in a deferred FIA will escape taxation during the accumulation phase, and if used for nursing home care, may ultimately escape it altogether. Should such care not be needed, the accumulated funds may be used for other purposes, such as conversion into an immediate annuity or a period-certain annuity. In either case, the annuitant benefits from an exclusion ratio that exempts from taxation a portion of each payment related to the basis of the contract and period over which it is expected to be returned. In the interim, the funds continue to accumulate tax-deferred interest until they are fully expended, in the case of a period-certain annuity, or until death in the case of a life annuity. Contrast this with an alternative non-qualified savings plan for such eventualities as nursing home care. The funds would be taxable throughout the accumulation period, and the amount of funds would typically be subject to capital losses that could jeopardize the individual at the time nursing home care is required.

6) Protection of Assets from Creditors or Fraud

One of the great fears of the elderly is that someone will obtain control of their assets and that they will lose their financial security without recourse to additional earning power. The elderly who have easily accessible, fully liquid assets are more prone to having someone abscond with their money, whether it be a related or unrelated party. In the case of a related party, who is assisting an aged person with daily living skills, the aged person is particularly vulnerable to emotional pressure to transfer assets with the implicit or explicit threat that care will be withheld if such transfer is not effected. Annuities are protected from creditors in most states, and the procedures involved in liquidating a portion or all of an annuity in order to meet an unwise disposal of their assets serves as a deterrent. A surrender penalty may be involved, as well as a delay of a month or so. This interval will relieve pressure on the aged person to transfer assets for such unwise purposes.

7) Tax Deferral

The classic approach taken by financial planners is to encourage tax deferral until one reaches a lower tax bracket at retirement. In today's uncertain tax environment, where certain tax preferences are scheduled to expire, an election is approaching, and a growing federal deficit, it cannot reasonably be assumed that tax rates will remain the same, or that one will slide into a lower tax bracket as one ages. Therefore, it is prudent to leave some flexibility in the timing of the realization of taxable income.

Research has demonstrated that for a person who purchases a deferred annuity at age 65 or beyond, the tax deferral benefit on a deferred annuity that is later converted (or exchanged) into an immediate annuity can exceed 200 basis points per year. In other words, for an alternative set of assets to produce a similar amount of after-tax income, they would need to generate more than 2% higher pre-tax return per year than the yield on an annuity. Several conditions affect the size of this tax benefit, including prevailing yields, length of time the annuity remains in deferral, length of remaining life, and the composition of the alternative portfolio among assets that generate capital gains, dividends, and ordinary income.

8) Avoidance of Probate Delays and Disclosures

Some people purchase deferred annuities as a convenient method of wealth transfer, in case the assets are not needed to provide for lifetime income. If one annuitizes the wealth at the onset of retirement, there may be nothing to transfer to one's heirs upon death.

The probate process can take a great deal of time. The settlement time frame for many estates is from nine months to two years. Complex or contested estates can take much longer. With few exceptions, your heirs will have to wait until probate is concluded to receive the bulk of their inheritance. Depending on the state, probate and administrative fees can consume between 6 and 10 percent of your estate. That percentage is calculated before any deductions or liens are taken out.

Privacy is an important issue for many people, especially as it pertains to their financial matters. Probated wills are public documents, but life insurance and annuity polices are private contracts. They do not have to be mentioned in a will and do not normally pass through probate. As a result, life insurance and annuity policies can be used to pass along assets with the utmost confidentiality and privacy intact.

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Dr. Mark F. Meyer has over twenty years of experience applying economic theory and quantitative methods to a range of complex business litigation and regulatory matters. Dr. MeyerÕs experience includes assessing liability and damages for litigations involving firms engaged in financial markets, especially insurance; investigations of insurer insolvencies; antitrust analysis of monopolization, mergers, and price discrimination in a wide range of industries; work in the economics of product distribution and marketing; analysis of regulatory initiatives involving insurance and other industries; and statistical and econometric applications to liability determination, market definition, class certification, and economic damages.

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EXHIBITS

Index Of Exhibits

Coalition Of Indexed Products
Comment Regarding Proposed Rule 151A

Exhibit	Description
A	Comparison of guarantees for indexed annuities versus fixed rate annuities.
B	Buyer's Guide to Fixed Deferred Annuities With Appendix For Equity-Indexed Annuities, National Association of Insurance Commissioners
C	Sample fixed indexed annuity marketing materials.
D	Sample fixed indexed annuity disclosure statement.
E	Sample fixed indexed annuity suitability statements.

Exhibit A
Comparison Of Guaranteed Cash Surrender Values
Fixed Indexed Annuities v. Fixed Annuities
Actual Figures For Anonymous Coalition Member

Top 5 Index Annuities In 2005						
Form No.	Premiums YTD 6/30/05	1st Year Bonus	Minimum Guaranteed Cash Surrender Values			
			1st Year	2nd Year	5th Year	10th Year
Index 1	$ 513,485,000	10%	$ 89,980	$ 92,004	$ 98,355	$ 109,929
Index 2	353,173,000		87,974	91,054	100,953	117,032
Index 3	275,639,000	7.5%	90,682	92,723	99,124	110,788
Index 4	94,350,000		93,150	96,410	106,891	123,916
Index 5	30,233,000	2%	95,790	98,663	111,290	126,328
	$ 1,266,880,000					

Top 2 Fixed Rate Annuities And 2 Other Products						
Form No.	Premiums YTD 6/30/05	1st Year Bonus	Minimum Guaranteed Cash Surrender Values			
			1st Year	2nd Year	5th Year	10th Year
FPDA 1	$ 36,659,000	2%	$ 87,935	$ 89,913	$ 99,473	$ 117,425
FPDA 2	14,194,000	6%	87,935	89,913	99,473	117,425
FPDA 3	353,000	2%	89,649	92,687	100,646	120,457
FPDA 4	154,000	6%	93,165	95,215	105,184	123,863
	$ 51,360,000					

BUYER'S GUIDE TO FIXED DEFERRED ANNUITIES WITH APPENDIX FOR EQUITY-INDEXED ANNUITIES

Prepared by the

NAIC

National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

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OM Financial Life Insurance Company

FGLI4898 (10-2002)

IT IS IMPORTANT

that you understand the differences among various annuities, so you can choose the kind that best fits your needs. This guide focuses on fixed deferred annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your agent or the company. Make sure you're satisfied with the answers before you buy.

WHAT IS AN ANNUITY?

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.

An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.

Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefit of annuity contracts.

A deferred annuity has two parts of periods. During the accumulation period, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity. During the second period, called the payout period, the company pays income to you or to someone you choose.

WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're considering and the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

SINGLE PREMIUM OR MULTIPLE PREMIUM

You pay the insurance company only one payment for a single premium annuity. You make a series of payments for a multiple premium annuity. There are two kinds of multiple premium annuities. One kind is a flexible premium contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a scheduled premium annuity, the contract spells out your payments and how often you'll make them.

IMMEDIATE OR DEFERRED

With an immediate annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a deferred annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

FIXED OR VARIABLE

Fixed

During the accumulation period of a fixed deferred annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the payout period, the amount of each income payment to you is generally set when the payments start and will not change.

Variable

During the accumulation period of a variable annuity, the insurance company puts your premiums (less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account).

HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time. Usually, what these rates will be is entirely up to the insurance company.

CURRENT INTEREST RATE

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not change for some time period.

The initial rate is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.

The renewal rate is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.

MINIMUM GUARANTEED RATE

The minimum guaranteed interest rate is the lowest rate your annuity will earn. This rate is stated in the contract.

MULTIPLE INTEREST RATES

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods.

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. You get only one of the accumulated values depending on which benefit you choose.

WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

SURRENDER OR WITHDRAWAL CHARGES

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a withdrawal charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a surrender charge. In either case, the company may figure the charge as a percentage of the value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a window, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a bail-out option.

In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a rolling surrender or withdrawal charge.

Some annuity contracts have a market value adjustment feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with a MVA feature may credit a higher rate than an annuity without that feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.

FREE WITHDRAWAL

Your annuity may have a limited free withdrawal feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.

CONTRACT FEE

A contract fee is a flat dollar amount charged either once or annually.

TRANSACTION FEE

A transaction fee is a charge per premium payment or other transaction.

PERCENTAGE OF PREMIUM CHARGE

A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.

PREMIUM TAX

Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?

ANNUITY INCOME PAYMENTS

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's benefit rate in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.

There is a table of guaranteed benefit rates in each annuity contract. Most companies have current benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company generally uses the benefit rate in effect at the time to figure the amount of your income payment.

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you.

Life Only

The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependents have enough income of their own.

Life Annuity with Period Certain

The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This period certain is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity. Because the "period certain" is an added benefit, each income payment will be smaller than in a life-only option.

Joint and Survivor

The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be able to choose to have payments continue for a set length of time. Because the survivor feature is an added benefit, each income payment is smaller than in a life-only option.

DEATH BENEFIT

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?

While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.

WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.

Part of the payments you receive from an annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you withdraw the accumulation before age 59 ½. The Internal Revenue Code also has rules about distributions after the death of a contract holder.

Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.

You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.

WHAT IS A "FREE LOOK" PROVISION?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a free look or right to return period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.

HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- How much retirement income will I need in addition to what I will get from Social Security and my pension?
- Will I need that additional income only for myself or for myself and someone else?
- How long can I leave my money in the annuity?
- When will I need income payments?
- Does the annuity let me get money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?

WHAT QUESTIONS SHOULD I ASK MY AGENT OR THE COMPANY?

- Is this a single premium or multiple premium contract?
- Is this an equity-indexed annuity?
- What is the initial interest rate and how long is it guaranteed?
- Does the initial rate include a bonus rate and how much is the bonus?
- What is the guaranteed minimum interest rate?
- What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?
- Are there withdrawal or surrender charges or penalties if I want to end my contract early and take out all of my money? How much are they?
- Can I get a partial withdrawal without paying surrender or other charges or losing interest?
- Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?
- Is there a market value adjustment (MVA) provision in my annuity?
- What other charges, if any, may be deducted from my premium or contract value?
- If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change?
- Is there a death benefit? How is it set? Can it change?
- What income payment options can I choose? Once I choose a payment option, can I change it?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule or charges that could mean new expenses you must pay directly or indirectly.

You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in. Be sure you understand the effect of all charges.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.

Remember that the quality of service that you can expect from the company and the agent is a very important factor in your decision.

When you receive your annuity contract, *READ IT CAREFULLY!!* Ask the agent and company for an explanation of anything you don't understand. Do this before any free look period ends.

Compare information for similar contracts from several companies. Comparing products may help you make a better decision.

If you have a specific question or can't get answers you need from the agent or company, contact your state insurance department.

APPENDIX 1 – EQUITY-INDEXED ANNUITIES

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

WHAT ARE EQUITY-INDEXED ANNUITIES?

An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500), which is an equity index. The value of any index varies from day to day and is not predictable.

When you buy an equity-indexed annuity you own an insurance contract. You are not buying share of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest, if any, is calculated and credited. How much additional interest you get and when you get it depends on the features of your particular annuity.

Your equity-indexed annuity, like other fixed annuities, also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death benefits. The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases.

WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula.

INDEXING METHOD

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

TERM

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

PARTICIPATION RATE

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% (9% x 70% = 6.3%). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

CAP RATE OR CAP

Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.

FLOOR ON EQUITY INDEX-LINKED INTEREST

The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases, your fixed annuity will have a minimum guaranteed value.

AVERAGING

In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.

INTEREST COMPOUNDING

Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.

MARGIN/SPREAD/ADMINSTRATIVE FEE

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. The percentage, sometimes referred to as the "margin," "spread," or "administrative fee," might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% (10% - 2.25% = 7.75%). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.

VESTING

Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

HOW DO THE COMMON INDEXING METHODS DIFFER?

ANNUAL RESET

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.

HIGH-WATER MARK

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

LOW-WATER MARK

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

POINT-TO-POINT

The indexed-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.

WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

FEATURES

ANNUAL RESET

Since the interest earned is "locked in" annually and the index value is "reset" at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.

HIGH-WATER MARK

Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle of the term, then drops off at the end of the term.

LOW-WATER MARK

Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end of the term.

POINT-TO-POINT
Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other designs.

Generally, equity-indexed annuities offer preset combinations of features. You may have to make trade-offs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

TRADE-OFFS

ANNUAL RESET
Your annuity's participation rate may change each year and generally will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year.

HIGH-WATER MARK
Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

LOW-WATER MARK
Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

POINT-TO-POINT
Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end of the term.

WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?

CAP ON INTEREST EARNED
While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.

AVERAGING
Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of index-linked interest you earn when the index rises either near the start or at the end of the term.

PARTICIPATION RATE
The participation rate may vary greatly from one annuity to another and from time to time within a particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.

INTEREST COMPOUNDING
It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a higher participation rate.

WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?
In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

ARE DIVIDENDS INCLUDED IN THE INDEX?
Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.

HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?
- Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?
- Or, am I somewhere in between these two extremes and willing to take some risks?

HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.

QUESTIONS YOU SHOULD ASK YOUR AGENT OR THE COMPANY

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities.

- How long is term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?
- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?
- Can I get a partial withdrawal without paying charges or losing interest? Does my contract have vesting? If so, what is the rate of vesting?

FINAL POINTS TO CONSIDER

Remember to read your annuity contract carefully when you receive it. Ask your agent or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the agent or company, contact your state insurance department.

American Equity's Gold standard for a secure Retirement

Bonus Gold

(INDEX-1-07)*

Where Will Your Retirement Dollars Take You?

RETIREMENT PROTECTION

ASSURING YOUR LIFESTYLE...

As Americans, we work hard everyday to earn an income to take care of our families, educate our children and provide for a secure retirement. As retirement age approaches, we are wise to consider:

- **Are Our Retirement Dollars Safe?**
- **How Will Taxes Affect Our Standard of Living?**
- **What Happens To My Family if I Become Ill?**
- **Do We Have Enough Money to Retire?**

INDEXED ANNUITIES FOR YOUR RETIREMENT PORTFOLIO

Indexed annuities are fixed annuities that provide an opportunity to potentially earn more interest than traditional fixed annuities and other safe money alternatives. This is done by basing interest earned on an increase in an equity or bond index. You control how your annuity grows by choosing the index crediting methods on each Contract Anniversary. The most commonly used indices are:

- S&P 500®
- Dow Jones Industrial Average℠
- Lehman Brothers U.S. Aggregate

A very important benefit is that your premium and credited interest can never be lost due to index volatility.

When purchasing an indexed annuity, you own *an annuity* Contract backed by American Equity Investment Life Insurance Company, you are not purchasing shares of stock or indexes.

BENEFITS OF ANNUITIES

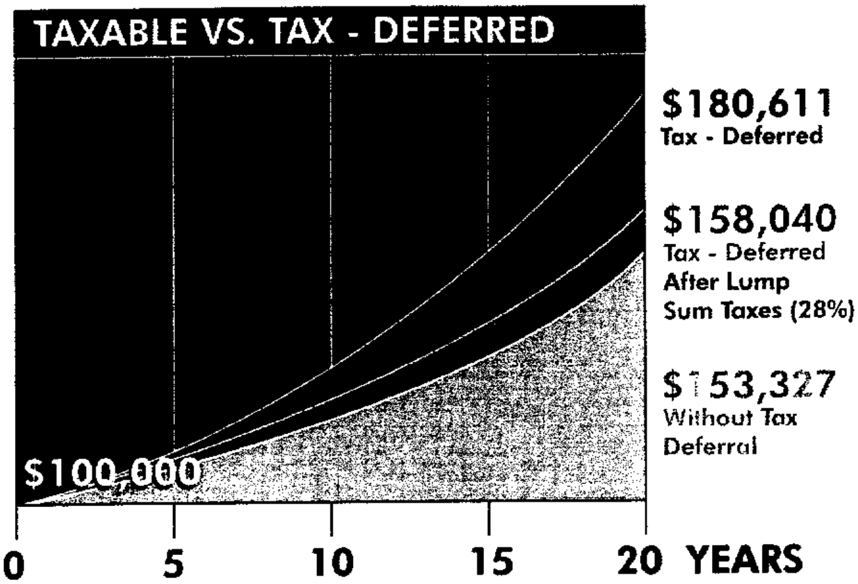
At American Equity, our innovative tax deferred annuities help you maximize both growth *and safety* for your hard earned retirement dollars, ultimately offering you the peace of mind you deserve. We understand that creating a retirement nest egg is hard work and while many people take into consideration market risk, there are five other factors you should consider as well:

- Safety Of Premium
- Income Taxes
- Avoidance Of Probate
- Liquidity
- Guaranteed Income

SAFETY OF PREMIUM

Fixed annuities by their very nature are considered a safe money alternative. It is a contract between you and the insurance company for guaranteed interest and guaranteed *income options.*

American Equity insures this safety by investing your premium dollars in a diversity of investments that are closely regulated by state insurance departments. These long-term investments ensure the stability of the company and help to provide you with a competitive yield.



Note: Example assumes 3% annual interest rate and 28% tax bracket.

INCOME TAXES

One of the primary advantages of deferred annuities is the opportunity to accumulate a substantial sum of money by **allowing your premium and interest to grow tax-deferred. Unlike taxable investments, you pay no taxes on your annuity interest until you begin to take withdrawals or receive income.** This allows your money to grow faster than in a taxable account. With our annuities you earn interest on your premium, interest on your interest and interest on what you would normally pay in income taxes.

The chart above illustrates how much more your money grows over a 20-year period with a tax-deferred annuity compared to an account that is currently taxed.

AVOIDANCE OF PROBATE

In the case of premature death, your beneficiaries have the accumulated funds within your annuity available to them and may avoid the expense, delay and publicity of probate. Your named beneficiaries can choose to receive the proceeds as monthly income or a lump sum payment.

LIQUIDITY

American Equity provides you with opportunities to withdraw funds at any time (subject to applicable surrender charges). Our contracts allow penalty-free withdrawals of up to 10%, after the first contract anniversary. American Equity also has available certain riders which increase liquidity in the event of confinement to a nursing home, or if diagnosed with a terminal illness. (Riders not available in all states.)

GUARANTEED INCOME

American Equity can provide you with a guaranteed income from this tax-deferred annuity. You have the ability to choose from several different income options, including payments for a specified number of years or income for life, no matter how long you live.

Is Protection from Losses Important to You?

The Bonus Gold: Choices & Diversification

	Annual Monthly Average	Annual Point to Point
Interest Credit Calculation	Average sum of index closes on monthly Contract Anniversary	Percentage of annual increase in the Index
Index Availability	S&P 500®, DJIA℠	S&P 500®, DJIA℠, & Lehman Brothers Bond
Frequency of Interest Credit	Annually	Annually
Cap, AFR or Participation Rate Available	Choice of Cap & AFR or Participation Rate* *Provided by MA-PR Rider on S&P 500® only.	Choice of Cap & AFR or Participation Rate* *Provided by APT-PR Rider on S&P 500® on

TRUE DIVERSIFICATION

American Equity annuities offer 9 Interest Crediting Methods using 3 different Indexes for choices and flexibility. American Equity is one of only a few companies offering both bond and equity based interest-crediting methods.

INDEX CHOICES

The S&P 500® Index contains Stocks from 500 various industry leaders and is widely regarded as the premier benchmark for U.S. stock market performance.

Dow Jones Industrial Average℠ is the oldest continuing stock market index in the world. Many of the stocks represented in the DJIA℠ are leaders in their industries.

Lehman Brothers U.S. Aggregate Index is a U.S. dollar denominated index made up of fixed rate government agencies, corporations, mortgage pass throughs and asset-backed securities.

Choice Of:

Cap Rate/Asset Fee Rate (AFR)

- **Cap Rate** - An upper limit applied to the Index credit. Cap rates are subject to change, declared each Contract anniversary, and guaranteed to never be less than 4% on the Annual Monthly Average and Annual Point to Point Crediting Methods. The Cap Rate on the Monthly Point to Point is guaranteed to never be less than 1%. (and)*

- **Asset Fee Rate (AFR)** - A deduction used in calculation of Index Credit. AFR is set at issue, and guaranteed for life of contract.

-OR-

*No minimums in CA.

Monthly Point to Point*	Fixed Rate
Annual sum of monthly changes in the Index with cap less an asset fee	Fixed Interest Rate Declared
S&P 500®	Not Applicable
Annually	Daily
Cap & AFR	Not Applicable
*Provided by MPT Rider.	

Participation Rate (PR) - The stated percentage of any Index increase credited to the contract. PRs are subject to change, declared annually, and guaranteed to never be less than 25%.*

INDEX CREDITING METHOD CHOICES

Annual Monthly Average - Index Credits are based on 12 dates during the year. The average is calculated by adding the 12 Index amounts on each monthly date and dividing by 12. Caps, Asset Fees, or Participation Rates are applied to the Index Credit Calculation.

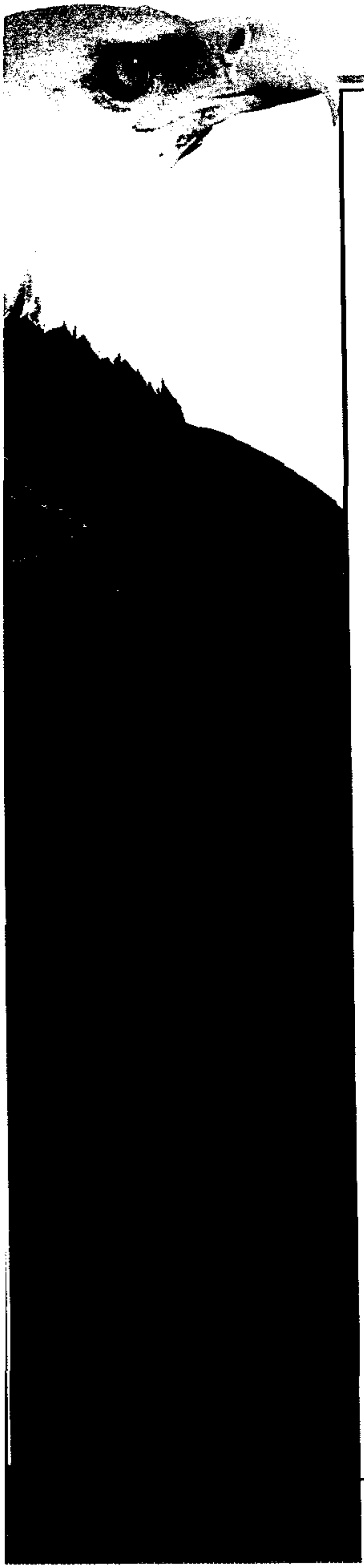
Annual Point to Point - On each Contract anniversary the Index value is compared to the previous years Index value. The Index Credit is based on the increase in the Index value from point to point. Caps, Asset Fees, or Participation Rates are applied to the Index Credit Calculation.

Monthly Point to Point - Each month a percentage of change is calculated. Caps are applied to any increase. The sum of the resulting monthly values, less an Asset Fee, is the Index Credit applied on each Contract Anniversary.

Fixed Value Rate based on a current declared interest rate guaranteed to never be less than the Fixed Value Minimum Guaranteed Interest Rate stated in the Contract.

Transfer of Values - American Equity annuities allow for annual transfers between different values allowing you greater flexibility in utilizing the interest crediting methods available. A Transfer of Values (TOV) letter and form are sent one month prior to the contract anniversary as a courtesy. Transfers can take place within five business days after the contract anniversary.

Bonus Gold Benefits and Accessibility



10% PREMIUM BONUS
We guarantee a 10% Premium Bonus for issue ages 0-80, 5% for issue ages 81-85. This Premium Bonus allows you to jump start your way to a secure retirement. Credited on all first year premiums, the bonus increases your Contract Value by 10% (or 5%) as soon as the contract is issued. There are no waiting periods, vesting schedules or payout requirements to keep the bonus –it's your money– guaranteed.

LIFETIME INCOME BENEFIT RIDER (LIBR-2008)
This rider allows the owner/annuitant to receive guaranteed income for life without annuitization. The income amount is a percentage of the Income Account Value (IAV) based on the owner/annuitant's age at time of election.

There are two IAV rate options to choose from. There may be a fee charged annually based on the IAV rate selected. We include this rider with all contracts where the Owner and Annuitant are the same person. If, on the day before Lifetime Income Benefit (LIB) payments begin, the IAV is less than the Contract Value we will increase the IAV to equal the Contract Value. See Lifetime Income Benefit Rider (LIBR) brochure (Form #1103) for more details.

DEATH BENEFIT
The Death Benefit is the full value of your contract and is paid in a lump sum with no surrender charges to your named beneficiaries. Other income options may also be available.

ACCESSIBILITY – 10% PENALTY-FREE WITHDRAWALS
We understand that access to your money is very important. While most financial vehicles charge penalties for withdrawals before maturity, our annuities offer annual 10% penalty-free withdrawals, beginning in year 2. In the first year, you may receive systematic withdrawals of interest or Required Minimum Distributions from the fixed interest account as quickly as 30 days after your contract is issued.*

NURSING CARE RIDER**– 20% PENALTY-FREE WITHDRAWALS
Our Nursing Care Rider is automatically included, at no cost, for Annuitants under age 75 at issue. This allows an increase in the penalty-free withdrawal amount up to 20% of the Contract Value for a qualified nursing care center confinement, beginning one year after issue and continuing for at least 90 consecutive days.

TERMINAL ILLNESS RIDER** – 75% PENALTY-FREE WITHDRAWAL
The Terminal Illness Rider is automatically included, at no cost, for Annuitants under age 75 at issue. After the contract is in force one year, this allows one penalty-free withdrawal of up to 75% of the Contract Value for a terminal illness expected to result in death within one year, as diagnosed by a qualified physician.

MINIMUM GUARANTEED SURRENDER VALUE (MGSV)
MGSV equals 80% (84% issue ages 81-85) of 1st year premiums and premium bonus, plus 87.5% of any additional premiums, less any Withdrawal Proceeds, at Minimum Guaranteed Interest Rate (MGIR) compounded annually.

CASH SURRENDER VALUE
Cash Surrender Value is equal to the greater of Contract Value minus any applicable Surrender Charges or MGSV.

SURRENDER CHARGES
Surrender charges are deducted for withdrawals exceeding the penalty-free amounts or full surrender, and apply for the first 16 years for issue ages 0-80, starting at 20% and decreasing. For issue ages 81-85, the surrender charges apply for the first 9 years, starting at 9% and decreasing. See disclosure for complete schedule.

*Not guaranteed and subject to change

**Not available in MA.
See Product Disclosure for further details.

Bonus Gold

INDEX-1-07*

INDEXED ANNUITY DISCLOSURE

American Equity's Bonus Gold provides an alternative for your financial future. The design of this product allows for long-term accumulation of money you don't anticipate needing in the short term. Bonus Gold is a flexible premium fixed indexed deferred annuity. Bonus Gold offers:

10% PREMIUM BONUS+

Credited on all 1st year Premiums, the bonus increases your Contract Value by 10% as soon as the Contract is issued. We don't require annuitization to keep credited bonus in your Contract Value. The bonus is included in the calculation of:

- Death Benefit
- Minimum Guaranteed Surrender Value
- Cash Surrender Value
- Income Account Value

+Issue ages 0-80, 5% bonus for issue ages 81-85.

VALUE CALCULATIONS

Indexed Values are calculated by:

- Adding any premiums paid plus any credited bonus
- Subtracting any withdrawals, including associated surrender charges and
- Adding Index credits to determine an indexed value.

The total Indexed Value is the sum of the Indexed Value calculations for the Bond, Averaged, Point to Point, and Monthly Point to Point Values.

Fixed Value is calculated in the same way except interest credited is based on a fixed interest rate rather than an Index Credit.

The Contract Value equals the sum of the Fixed and Indexed Values. The Contract Value is calculated on each contract anniversary.

MINIMUM GUARANTEES

We set the Minimum Guaranteed Interest Rate on the issue date and guarantee it for the life of the contract. It is guaranteed to never be less than 1%, and applies to Minimum Guaranteed Surrender Value only. The Fixed Value Minimum Guaranteed Interest Rate is 1%.

LIFETIME INCOME BENEFIT RIDER (LIBR-2008)

This rider allows you to take a guaranteed lifetime income from your annuity without losing control of your retirement assets. The rider:

- Provides a lifetime income that you cannot outlive
- Does not require annuitization to receive Lifetime Income Benefit payments
- Calculates lifetime income as a percentage of the Income Account Value (IAV) based on the Owner/Annuitant's age at time of election. The IAV is determined by taking total premiums paid, plus any premium bonus accumulated at selected IAV rate annually until the earliest of the 10th Contract Anniversary, the date LIB payments begin, or either the Rider or base contract terminates.
- May have a Rider Fee depending on which IAV rate is selected. We may reset the Rider Fees if you choose to restart your IAV period.
- Allows you to restart the IAV accumulation period once between the 5th and 10th Contract Anniversary
- Is automatically added only if the Owner and Annuitant are the same person

Before we can issue your annuity contract, you must choose your IAV Rate by completing the Lifetime Income Benefit Rider Authorization, form #1103-D.

* Form numbers vary by state. (NCR-2) and (TIR-1) not available in MA.

Owner's Initials

ACCESSIBILITY

Our annuities offer Penalty-free Withdrawals up to **10%** of your contract value once annually after the first contract anniversary.

The Nursing Care Rider (NCR-2)* and Terminal Illness Rider (TIR-1)*, are for annuitants under age 75 at issue. These riders allow you to withdraw a larger portion of your money penalty free after the first contract year if you become confined to a nursing home or suffer a terminal illness.

TAX TREATMENT

You may be subject to a 10% Federal penalty if you make withdrawals or surrender this annuity before age 59½. If this annuity is within a qualified plan all distributions may be taxable. Under current tax laws annuities grow tax deferred and an annuity is not required for tax deferral in a qualified plan. Any distribution may cause a taxable event. Neither American Equity nor our agents offer legal, investment, or tax advice. Please consult a qualified advisor for these matters.

The S&P 500® and DJIA℠ Indices do not include dividends.

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This product is not sponsored, endorsed, sold or promoted by Lehman Brothers and Lehman Brothers makes no representation regarding the advisability of purchasing this product.

1107-D 05/01/08

Bonus Gold INDEX-1-07*

SURRENDER CHARGES

Surrender Charges are deducted from your Contract Values in the event of:
1. Full Surrender or
2. Withdrawals in the first year or
3. Withdrawals in excess of the Penalty-free Withdrawal amount during the surrender charge period shown below:

Issue Ages 0-80

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17+
%	20	19.5	19	18.5	18	17.5	17	16	15	14	12	10	8	6	4	2	0

Issue Ages 81-85

Year	1	2	3	4	5	6	7	8	9	10+
%	9	8	7	6	5	4	3	2	1	0

Surrender Charges may vary by state.

The Minimum Guaranteed Surrender Value equals 80% (or 84% for issue ages 81-85) of premiums paid in the first year including the Premium Bonus, plus 87.5% of any additional premiums paid after the 1st year, minus any withdrawals, all accumulated at the Minimum Guaranteed Interest Rate.

The Cash Surrender Value equals the greater of the Contract Value minus any Surrender Charges or the Minimum Guaranteed Surrender Value. Your Cash Surrender Value can never be lower than the Minimum Guaranteed Surrender Value of the Contract.

CHOICES AND FLEXIBILITY

You choose how to allocate your total initial premium. You may make additional premium payments in any amount and frequency within the premium limits. Additional premiums are automatically credited to the Fixed Value. The contract offers additional flexibility by allowing you to transfer money in or out of any value on each contract anniversary. Additional premiums credited to the Fixed Value can be transferred to other values at that time.

- The minimum initial premium is $5,000.
- The minimum allocation for each value is $1,000.
- The minimum transfer to select a new value is 10% of the Contract Value.

Nine interest crediting methods offer a variety of choices. For a detailed description of each crediting method refer to page 4 of brochure.

1 Traditional Fixed Value Interest Rate
2 S&P 500 Annual Monthly Average w/Cap & AFR
3 S&P 500 Annual Monthly Average w/PR**
4 S&P 500 Annual Pt. to Pt. w/ Cap & AFR
5 S&P 500 Annual Pt. to Pt. w/PR**
6 S&P Monthly Pt. to Pt. w/ Cap & AFR**
7 Dow Annual Monthly Average w/Cap & AFR
8 Dow Annual Pt. to Pt. w/Cap & AFR
9 Lehman Brothers U.S. Aggregate Annual Pt. to Pt. w/ Cap and AFR

TOTAL INITIAL PREMIUM ALLOCATION:

1 ______%
2 ______%
3 ______%
4 ______%
5 ______%
6 ______%
7 ______%
8 ______%
9 ______%
100%

You will have the benefit of an annual reset of index credits. Your index credits become part of the Contract Value once credited and can never be lost or taken away.

**Provided by the MA-PR, APT-PR & MPT riders. Available in most states.

DEATH BENEFIT

The Death Benefit offers a variety of settlement options. Your beneficiary(ies) will have access to your contract's full value. Settlement options include a lump sum payout, the guaranteed income of annuitization, penalty-free and continued tax deferral if you are a spouse. The Death Benefit is the greater of the Contract Value or Minimum Guaranteed Surrender Value at the death of the Annuitant or Owner, whichever comes first.

1107-D 05/01/08

This disclosure is intended to summarize this Annuity. Consult your Contract for specific terms and conditions of your Annuity. Annuity contracts are products of the insurance industry and are not guaranteed by any bank or insured by the FDIC. 100% of your premium is applied to this contract. Your agent is paid a commission from American Equity.

If you are replacing an existing contract, carefully compare the benefits of the proposed contract with your existing contract to ensure your decision is in your best interest.

I have read and received a copy of this document and a copy of the NAIC Buyer's Guide to Indexed Annuities.*** I understand I am applying for an indexed annuity and that past Interest and Index activity is not intended to predict future activity. I also acknowledge that this annuity meets my financial objectives and that a full surrender or withdrawals over penalty free amount taken within the Surrender Charge Period will result in Surrender Charges being assessed and potential loss of Premium.

____
Owner's Signature **Date**

____
Joint Owner's Signature **Date**

Agents Statement - I certify that I have provided a copy of this document*** to the applicant and I have made no promises or assurances regarding values of the contract, nor have I made statements that differ from this disclosure.

____
Agent's Signature **Date**

____
Agent's State License Number

***NAIC Buyer's Guide is recommended for all applications and **delivery is required** at the time of the application in AZ, CO, HI, and UT.

AMOUNT OF PREMIUM RECEIVED

$______________________________
Amount Received From

____
Owner's Name

____
Date

____
Agent's Name - Please Print

____
Agent's Signature

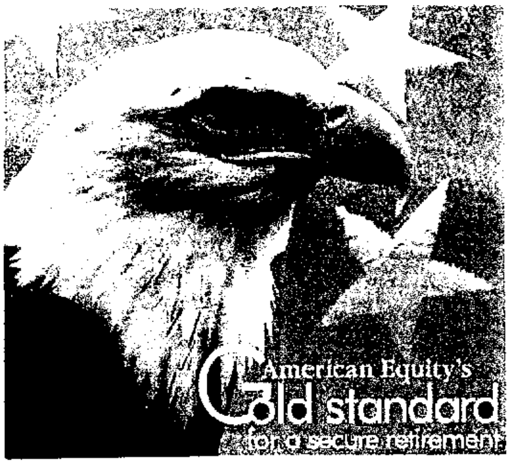
American Equity Investment Life Insurance Company
P.O. Box 71216
Des Moines, Iowa 50325
www.american-equity.com
888-221-1234

IMSA INSURANCE MARKETPLACE STANDARDS ASSOCIATION

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY

Bonus Gold INDEX-1-07*

INDEXED ANNUITY DISCLOSURE



ACCESSIBILITY

Our annuities offer Penalty-free Withdrawals up to **10%** of your contract value once annually after the first contract anniversary.

The Nursing Care Rider (NCR-2)* and Terminal Illness Rider (TIR-1)*, are for annuitants under age 75 at issue. These riders allow you to withdraw a larger portion of your money penalty free after the first contract year if you become confined to a nursing home or suffer a terminal illness.

TAX TREATMENT

You may be subject to a 10% Federal penalty if you make withdrawals or surrender this annuity before age 59½. If this annuity is within a qualified plan all distributions may be taxable. Under current tax laws annuities grow tax deferred and an annuity is not required for tax deferral in a qualified plan. Any distribution may cause a taxable event. Neither American Equity nor our agents offer legal, investment, or tax advice. Please consult a qualified advisor for these matters.

The S&P 500® and DJIA℠ Indices do not include dividends.

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This product is not sponsored, endorsed, sold or promoted by Lehman Brothers and Lehman Brothers makes no representation regarding the advisability of purchasing this product.

1107-D 05/01/08

American Equity's Bonus Gold provides an alternative for your financial future. The design of this product allows for long-term accumulation of money you don't anticipate needing in the short term. Bonus Gold is a flexible premium fixed indexed deferred annuity. Bonus Gold offers:

10% PREMIUM BONUS+

Credited on all 1st year Premiums, the bonus increases your Contract Value by 10% as soon as the Contract is issued. We don't require annuitization to keep credited bonus in your Contract Value. The bonus is included in the calculation of:

- Death Benefit
- Cash Surrender Value
- Minimum Guaranteed Surrender Value
- Income Account Value

+Issue ages 0-80, 5% bonus for issue ages 81-85.

VALUE CALCULATIONS

Indexed Values are calculated by:

- Adding any premiums paid plus any credited bonus
- Subtracting any withdrawals, including associated surrender charges and
- Adding Index credits to determine an indexed value.

The total Indexed Value is the sum of the Indexed Value calculations for the Bond, Averaged, Point to Point, and Monthly Point to Point Values.

Fixed Value is calculated in the same way except interest credited is based on a fixed interest rate rather than an Index Credit.

The Contract Value equals the sum of the Fixed and Indexed Values. The Contract Value is calculated on each contract anniversary.

MINIMUM GUARANTEES

We set the Minimum Guaranteed Interest Rate on the issue date and guarantee it for the life of the contract. It is guaranteed to never be less than 1%, and applies to Minimum Guaranteed Surrender Value only. The Fixed Value Minimum Guaranteed Interest Rate is 1%.

LIFETIME INCOME BENEFIT RIDER (LIBR-2008)

This rider allows you to take a guaranteed lifetime income from your annuity without losing control of your retirement assets. The rider:

- Provides a lifetime income that you cannot outlive
- Does not require annuitization to receive Lifetime Income Benefit payments
- Calculates lifetime income as a percentage of the Income Account Value (IAV) based on the Owner/Annuitant's age at time of election. The IAV is determined by taking total premiums paid, plus any premium bonus accumulated at selected IAV rate annually until the earliest of the 10th Contract Anniversary, the date LIB payments begin, or either the Rider or base contract terminates.
- May have a Rider Fee depending on which IAV rate is selected. We may reset the Rider Fees if you choose to restart your IAV period.
- Allows you to restart the IAV accumulation period once between the 5th and 10th Contract Anniversary
- Is automatically added only if the Owner and Annuitant are the same person

Before we can issue your annuity contract, you must choose your IAV Rate by completing the Lifetime Income Benefit Rider Authorization, form #1103-D.

Owner's Initials

* Form numbers vary by state. (NCR-2) and (TIR-1) not available in MA.

Bonus Gold INDEX-1-07*

SURRENDER CHARGES

Surrender Charges are deducted from your Contract Values in the event of:
1. Full Surrender or
2. Withdrawals in the first year or
3. Withdrawals in excess of the Penalty-free Withdrawal amount during the surrender charge period shown below:

Issue Ages 0-80

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17+
%	20	19.5	19	18.5	18	17.5	17	16	15	14	12	10	8	6	4	2	0

Issue Ages 81-85

Year	1	2	3	4	5	6	7	8	9	10+
%	9	8	7	6	5	4	3	2	1	0

Surrender Charges may vary by state.

The Minimum Guaranteed Surrender Value equals 80% (or 84% for issue ages 81-85) of premiums paid in the first year including the Premium Bonus, plus 87.5% of any additional premiums paid after the 1st year, minus any withdrawals, all accumulated at the Minimum Guaranteed Interest Rate.

The Cash Surrender Value equals the greater of the Contract Value minus any Surrender Charges or the Minimum Guaranteed Surrender Value. Your Cash Surrender Value can never be lower than the Minimum Guaranteed Surrender Value of the Contract.

CHOICES AND FLEXIBILITY

You choose how to allocate your total initial premium. You may make additional premium payments in any amount and frequency within the premium limits. Additional premiums are automatically credited to the Fixed Value. The contract offers additional flexibility by allowing you to transfer money in or out of any value on each contract anniversary. Additional premiums credited to the Fixed Value can be transferred to other values at that time.
- The minimum initial premium is $5,000.
- The minimum allocation for each value is $1,000.
- The minimum transfer to select a new value is 10% of the Contract Value.

Nine interest crediting methods offer a variety of choices. For a detailed description of each crediting method refer to page 4 of brochure.

1 Traditional Fixed Value Interest Rate
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6 S&P Monthly Pt. to Pt. w/ Cap & AFR**
7 Dow Annual Monthly Average w/Cap & AFR
8 Dow Annual Pt. to Pt. w/Cap & AFR
9 Lehman Brothers U.S. Aggregate Annual Pt. to Pt. w/ Cap and AFR

TOTAL INITIAL PREMIUM ALLOCATION:

1 ________ %
2 ________ %
3 ________ %
4 ________ %
5 ________ %
6 ________ %
7 ________ %
8 ________ %
9 ________ %
100%

You will have the benefit of an annual reset of index credits. Your index credits become part of the Contract Value once credited and can never be lost or taken away.

**Provided by the MA-PR, APT-PR & MPT riders. Available in most states.

DEATH BENEFIT

The Death Benefit offers a variety of settlement options. Your beneficiary(ies) will have access to your contract's full value. Settlement options include a lump sum payout, the guaranteed income of annuitization, penalty-free and continued tax deferral if you are a spouse. The Death Benefit is the greater of the Contract Value or Minimum Guaranteed Surrender Value at the death of the Annuitant or Owner, whichever comes first.

1107-D 05/01/08

This disclosure is intended to summarize this Annuity. Consult your Contract for specific terms and conditions of your Annuity. Annuity contracts are products of the insurance industry and are not guaranteed by any bank or insured by the FDIC. 100% of your premium is applied to this contract. Your agent is paid a commission from American Equity.

If you are replacing an existing contract, carefully compare the benefits of the proposed contract with your existing contract to ensure your decision is in your best interest.

I have read and received a copy of this document and a copy of the NAIC Buyer's Guide to Indexed Annuities.*** I understand I am applying for an indexed annuity and that past Interest and Index activity is not intended to predict future activity. I also acknowledge that this annuity meets my financial objectives and that a full surrender or withdrawals over penalty free amount taken within the Surrender Charge Period will result in Surrender Charges being assessed and potential loss of Premium.

____
Owner's Signature Date

____
Joint Owner's Signature Date

Agents Statement - I certify that I have provided a copy of this document*** to the applicant and I have made no promises or assurances regarding values of the contract, nor have I made statements that differ from this disclosure.

____
Agent's Signature Date

____
Agent's State License Number

***NAIC Buyer's Guide is recommended for all applications and **delivery is required** at the time of the application in AZ, CO, HI, and UT.

AMOUNT OF PREMIUM RECEIVED

$________________________________
Amount Received From

____
Owner's Name

____
Date

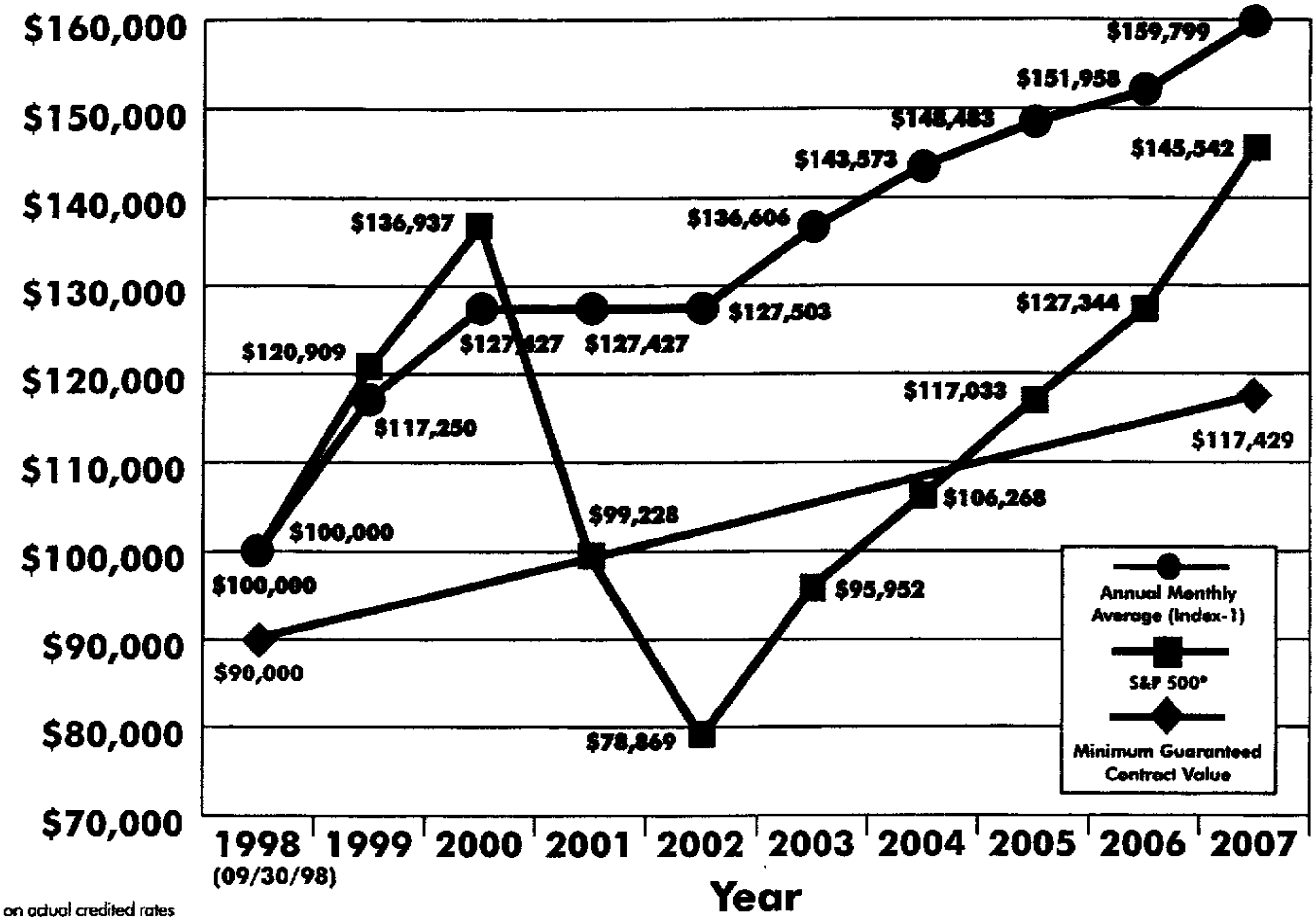
____
Agent's Name - Please Print

____
Agent's Signature

American Equity Investment Life Insurance Company
P.O. Box 71216
Des Moines, Iowa 50325
www.american-equity.com
888-221-1234

IMSA INSURANCE MARKETPLACE STANDARDS ASSOCIATION

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY



*This graph is based on actual credited rates for the period shown on the Index I product, which is no longer available for sale.

Past performance not an indication of future results. Please call our Marketing Department for new product information.

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Participation Rates apply, may change annually on Contract Anniversary.

Neither American Equity Investment Life Insurance Company nor any of our agents give legal, tax or investment advice. Consult your own personal advisor regarding these matters.

Indexed Annuities are products of the insurance industry and are not guaranteed by any bank, or insured by the FDIC.

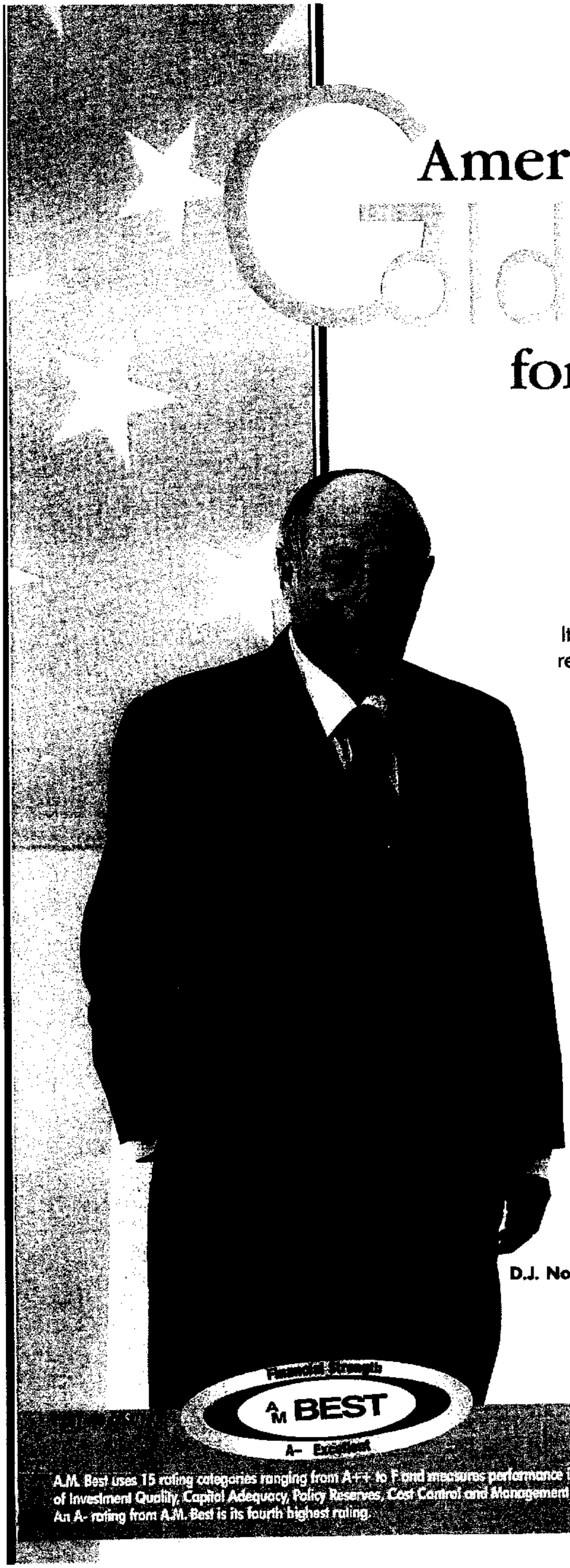
A HISTORY OF AMERICAN EQUITY'S INDEX-1* (9/30/98 - 9/30/07)

This history of American Equity's Index-I Indexed Annuity demonstrates the powerful benefits of Indexed Annuities with the annual reset interest crediting design. All of our current products offer annual reset design as well. The Index-I did exactly what it was supposed to do... give the Contract Owner the opportunity to accumulate value based on the appreciation of the S&P 500® Index, without the risk of loss of Premium in years when the S&P 500® was negative. All of this supported by a Minimum Guarantee.

NOW THAT'S HAVING YOUR CAKE AND EATING IT TOO!

These results should not be an indication that Indexed Annuities will beat the S&P 500® every time. This simply demonstrates the effectiveness of Indexed Annuities in years when the S&P 500® was negative.

Surrender Charges apply to surrenders or withdrawals taken in excess of the free withdrawal provision during the Surrender Charge Period.



American Equity's Gold standard for a secure Retirement

Bonus Gold

(INDEX-1-07)**

It is the American Equity dream to help Americans enjoy their retirement years with financial security. We care about providing products that protect you and your family. Our employee/owners are committed to ensuring peace of mind for your retirement future. Our commitment to unsurpassed service and strong contract owner benefits has allowed American Equity to experience consistent, record growth in our industry. In fact, we're the number 2 all-time producer of index annuities.+

When you buy an American Equity annuity, you are buying a promise, a promise that we will always be there when you need us. If you want an annuity that can offer you safety of premium, flexibility, tax advantages, accessibility when you need it and a chance to have a lifetime income, we have it. "We're the One" to offer you diverse financial planning choices for your retirement dollars.

**Not available in all states. See Product Disclosures for further details.
+Advantage Compendium.

D.J. Noble, CEO

IMSA
INSURANCE MARKETPLACE STANDARDS ASSOCIATION

5000 Westown Pkwy
West Des Moines, IA 50266
888-221-1234 ■ 515-221-9947 (fax)
www.american-equity.com

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY

A.M. Best uses 15 rating categories ranging from A++ to F and measures performance in the areas of Investment Quality, Capital Adequacy, Policy Reserves, Cost Control and Management Experience. An A- rating from A.M. Best is its fourth highest rating.

We're the One!
People Service Future

Safety Index® 10

Old Mutual® is the marketing name of OM Financial Life Insurance Company, and in NY only, OM Financial Life Insurance Company of New York, Old Mutual plc companies.

Each Old Mutual company is solely responsible for its contractual commitments.

Fixed Indexed Annuity Protection and Growth Potential for Your Savings

OLD MUTUAL®
INVEST INSURE INNOVATE

Thank you for your interest in the SAFETY INDEX 10 annuity from OM Financial Life Insurance Company. SAFETY INDEX 10 has an adaptable combination of interest options for your retirement dollars, and offers terrific guarantees, such as a minimum guaranteed surrender value that is 100% of your premiums compounding at 3% (less a surrender charge). On the fixed option, the initial interest rate is GUARANTEED for seven years, and is guaranteed to be equal to or greater than 3% for the life of the policy! Additionally, you have the security of the annual reset feature, where any account gains are locked in at the end of each year – your account will never decrease in value! You also have riders to address unexpected contingencies such as unemployment, diagnosis of a terminal illness or nursing home confinement. OM Financial Life has prepared this summary to help you understand SAFETY INDEX 10's many options and advantages. Please confirm your understanding by signing the enclosed confirmation statement.

A Fixed Indexed Annuity

Safety Index 10 is a flexible premium deferred interest indexed annuity with four indexed interest options and one fixed interest rate option. Safety Index 10 is designed to be a long-term retirement savings tool with many features to help you reach the standard of living you want during your retirement.

Tax Advantages

Although an annuity does not eliminate your tax liability on interest earnings, under current tax law all interest income earned accumulates on a tax-deferred basis. This tax deferral is currently available only to individual and joint owners, not to corporations or other non-individuals, under most circumstances. When purchased to fund a tax-qualified plan, there is no additional tax-deferral beyond that already provided by the plan; however, there may be other benefits worth considering.

A Choice of 5 Interest-Crediting Options

Safety Index 10 offers a choice of five interest crediting options. These options are 1-year monthly point-to-point with a cap, 1-year annual point-to-point with a cap, 1-year monthly average with a cap, 1-year monthly average with a spread and a fixed interest option. On the application, you can allocate your premiums among these five options. You may reallocate your account value between these options on each annuity anniversary. Interest rates are subject to change except as guaranteed.

Index Interest Options

If you choose to allocate some or all of your premiums to the index interest options, your interest credits will be credited annually based on formulas linked to changes in the monthly averaged or point-to-point values in the index, with each option subject to either a cap rate or spread rate. The cap rate is the maximum percentage applied on each anniversary as part of the total calculation for the annual index interest credit. The cap rate is declared in advance. The spread rate is a percentage declared in advance which is deducted as part of the calculation of the annual index interest credit. The monthly point-to-point index changes are subject to a cap that will never be less than one percent per month.
The annual point-to-point and annual monthly average index changes are subject to caps that will never be less than three percent per year. The annual monthly average index spread rate will never be greater than nine percent per year. These index interest options may result in no interest credits, but the credit will never be less than zero.

Index interest credits are not calculated or credited between index interest crediting dates; consequently, amounts surrendered between index interest crediting dates will not earn any interest credits. Any interest credit is applied to your annuity on its annual anniversary and is locked-in, so future decreases in any index will not affect the interest already credited to your annuity.

Fixed Interest Crediting

If you choose to allocate some or all of your premium to the fixed-interest option, interest is credited daily. The issued annuity will show the credited interest rate applicable for the first seven years. After the initial guarantee period, we will declare a new current rate annually and will never credit less than 3%.

Minimum Guaranteed Surrender Value (MGSV)

Your Safety Index 10 annuity contains a protective floor that increases with interest on your cash surrender value for the index interest options. The minimum guaranteed surrender value on a full surrender is 100% of premium, plus daily interest accruing at 3% less any current surrender charges. MGSV is reduced by prior withdrawals and adjusted for any reallocations.

Payment in the Event of Death or Annuity Payout Options

Should you die before electing to receive income payments, the account value will be paid to the beneficiary named in your annuity. If you choose to receive annuity payments, and the annuity date is after the fifth certificate anniversary, we will apply the greater of the account value or the minimum guaranteed surrender value to the annuity option then in effect. If the annuity date is before the fifth certificate anniversary, we will apply the greater of the surrender value or the minimum guaranteed surrender value to the annuity option then in effect.

Account Value

The annuity's account value before the annuity date consists of the fixed interest option's account value plus the indexed interest options account value.

Surrender Value

For a full surrender, the surrender value is the greater of:

- Total account value, less surrender charges; or
- Total minimum guaranteed surrender value

No Initial Sales Charges or Fees

There are no initial sales charges or fees. Your full initial premium is available to earn interest from the date your annuity is issued. Annuities are issued with an issue date of the 1st, 8th, 15th and 22nd of each month. Premium checks will be held without interest, until the next available issue date. In order to be issued with the next available issue date, applications must be received no later than 5:00 p.m. (Eastern time) two business days prior to that issue date.

For special rules about issue dates that fall on holidays or weekends, contact OM Financial Life. The minimum initial premium is $15,000 and the minimum allocation to any option is $2,000.

How Index-Linked Interest Crediting Works

One-Year Monthly Point-to-Point with a Cap

The monthly point-to-point index change is determined by subtracting the prior month's index value from current month's index value and dividing it by the prior month's index value. If this results in a positive monthly point-to-point index change and is not more than the declared cap, then it is used as the index change for that month. If it is more than the declared cap, then we use the declared cap as the index change for that month. Negative monthly point-to-point index changes are also applicable.

An index change for each month is captured over a 12-month period. The sum of the 12 monthly index changes will be the index credit rate on the index crediting date. The index credit rate is multiplied by the option's account value to determine the index interest credit.

One-Year Annual Point-to-Point with a Cap

The annual point-to-point index change is determined by subtracting the prior year's index value from the current year's index value and dividing it by the prior year's index value. If this results in a positive annual point-to-point index change and is not more than the declared cap, then it is used as the index change for that year. If it is more than the declared cap, then we use the declared cap as the index change for that year.

A negative annual point-to-point index change is not subject to a cap. The index change will be the index credit rate on the index crediting date. The index credit rate is multiplied by the option's account value to determine the index interest credit.

One-Year Monthly Average w/ a Cap

The index values are measured at one-month intervals from the month after the prior anniversary to the month of the anniversary inclusive. The index average is the average of the index values of the twelve months during each year. The index change (which is calculated on the anniversary) is the index average minus the index value on the prior anniversary; divided by the index value on the prior anniversary. If the index change results in a positive index change and is not more than the declared cap, then it is used as the index change for that year. If it is more than the declared cap, then we use the declared cap as the index change for that year. This "averaging" formula helps smooth out the index values used to calculate your index-linked interest rate, which helps protect your interest rate gains from severe declines in the index during the interest crediting period. This averaging method may also reduce the amount of interest that could be earned if the index rises steadily throughout the year or increases sharply at the end of the year.

One-Year Monthly Average with a Spread

The index values are measured at one-month intervals from the month after the prior anniversary to the month of the anniversary inclusive. The index average is the average of the index values of the twelve months during each year. The index change (which is calculated on the anniversary) is the index average minus the index value on the prior anniversary; divided by the index value on the prior anniversary. A spread rate, declared annually, is deducted from the index change to determine the final index credit. This "averaging" formula helps smooth out the index values used to calculate your index-linked interest rate, which helps protect your interest rate gains from severe declines in

the index during the interest crediting period. If the spread rate reaches 9%, the option would be suspended, and any funds in this option will be allocated uniformly across the remaining index interest options.

You are purchasing a fixed index annuity that provides minimum guaranteed surrender values. You should understand how your minimum guaranteed surrender values are determined and the features of the product that are used to determine the values. Even though the values of the annuity may be affected by external indices, this product is not an investment in the stock market and does not participate in any stock, bond or indexed investments.

Hypothetical Examples

The following examples are not intended to be representations of past or future performance of Safety Index 4. These examples use hypothetical caps and index value changes.

Steadily increasing index

Assume the index rises steadily. Safety Index 4's index-linked formula results in the following interest credit for monthly point-to-point, monthly average, and annual point-to-point index options.

MONTHLY POINT-TO-POINT

Month	Index	Monthly Increase	Capped Increase *monthly cap rate = 3.00%*
1	900.00		
2	909.30	1.03%	[illegible]
3	911.20	0.21%	0.21%
4	913.30	0.23%	[illegible]
5	914.40	0.12%	0.12%
6	921.30	0.75%	[illegible]
7	922.80	0.16%	0.16%
8	926.20	0.37%	[illegible]
9	928.10	0.21%	0.21%
10	936.70	0.93%	[illegible]
11	947.30	1.13%	1.13%
12	952.90	0.59%	[illegible]
13	972.10	2.01%	2.01%
Total of monthly capped increases			7.74%
Annual Interest Credit - Monthly Pt-to-Pt w/ a Cap			**7.74%**

ANNUAL PT-TO-PT

Date	Index	Increase	Capped Increase *annual cap rate = 9%*
Initial	900.00		
[illegible]	972.10	8.01%	8.01%
Annual Interest Credit - Annual Pt-to-Pt w/ a Cap			**8.01%**

MONTHLY AVG W/ CAP

Date	Index	Increase	Capped Increase *annual cap rate = 10%*
Initial	900.00		
[illegible]	929.63	3.29%	[illegible]
Annual Interest Credit - Monthly Average w/ Cap			**3.29%**

MONTHLY AVG W/ SPREAD

Date	Index	Increase	Increase After Spread *annual spread rate = 1.5%*
Initial	900.00		
[illegible]	929.63	3.29%	[illegible]
Annual Interest Credit - Monthly Average w/ Spread			**1.79%**

Sharply increasing index

Assume the index rises sharply. Safety Index 7's index-linked formula results in the following interest credit for monthly point-to-point, monthly average, and annual point-to-point index options.

MONTHLY POINT-TO-POINT

Month	Index	Monthly Increase	Capped Increase *monthly cap rate = 3.00%*
1	900.00		
2	925.65	2.85%	[illegible]
3	923.61	-0.22%	-0.22%
4	939.13	1.68%	[illegible]
5	1004.96	7.01%	3.00%
6	1008.28	0.33%	[illegible]
7	1014.43	0.61%	0.61%
8	1032.99	1.83%	[illegible]
9	1041.15	0.79%	0.79%
10	1040.22	-0.09%	[illegible]
11	1116.78	7.36%	3.00%
12	1123.37	0.59%	[illegible]
13	1126.51	0.28%	0.28%
Total of monthly capped increases			14.65%
Annual Interest Credit - Monthly Pt-to-Pt w/ a Cap			**14.65%**

ANNUAL PT-TO-PT

Date	Index	Increase	Capped Increase *annual cap rate = 9%*
Initial	900.00		
[illegible]	1126.51	25.17%	[illegible]
Annual Interest Credit - Annual Pt-to-Pt w/ a Cap			**9.00%**

MONTHLY AVG W/ CAP

Date	Index	Increase	Capped Increase *annual cap rate = 10%*
Initial	900.00		
[illegible]	1024.76	13.86%	[illegible]
Annual Interest Credit - Monthly Average w/ Cap			**10.00%**

MONTHLY AVG W/ SPREAD

Date	Index	Increase	Increase After Spread *annual spread rate = 1.5%*
Initial	900.00		
[illegible]	1024.76	13.86%	[illegible]
Annual Interest Credit - Monthly Average w/ Spread			**12.36%**

Upside Potential

Principal Protection

Minimum Interest Guaranteed on Surrender Value

Steadily increasing and a sharp drop in the index

Assume the index rises steadily, sharply drops and then sharply increases. Safety Index 4's index-linked formula results in the following interest credit for monthly point-to-point, monthly average, and annual point-to-point index options.

MONTHLY POINT-TO-POINT

Month	Index	Monthly Increase	Capped Increase *monthly cap rate = 3.00%*
1	900.00		
2	983.25	9.25%	3.00%
3	1020.91	3.83%	3.00%
[illegible]	1033.98	1.28%	[illegible]
5	1118.87	8.21%	3.00%
[illegible]	967.37	-13.54%	[illegible]
7	1026.48	6.11%	3.00%
[illegible]	983.16	-4.22%	[illegible]
9	995.84	1.29%	1.29%
10	1014.86	1.91%	[illegible]
11	1077.38	6.16%	3.00%
12	1094.51	1.59%	[illegible]
13	1123.73	2.67%	2.67%
Total of monthly capped increases			5.98%
Annual Interest Credit - Monthly Pt-to-Pt w/ a Cap			**5.98%**

ANNUAL PT-TO-PT

Date	Index	Increase	Capped Increase *annual cap rate = 9%*
Initial	900.00		
[illegible]	1123.73	24.86%	[illegible]
Annual Interest Credit - Annual Pt-to-Pt w/ a Cap			**9.00%**

MONTHLY AVG W/ CAP

Date	Index	Increase	Capped Increase *annual cap rate = 10%*
Initial	900.00		
[illegible]	1036.70	15.19%	[illegible]
Annual Interest Credit - Monthly Average w/ Cap			**10.00%**

MONTHLY AVG W/ SPREAD

Date	Index	Increase	Increase After Spread *annual spread rate = 1.5%*
Initial	900.00		
[illegible]	1036.70	15.19%	[illegible]
Annual Interest Credit - Monthly Average w/ Spread			**13.69%**

Decreasing index

Assume the index decreases throughout the year and ends with a decrease. Safety Index 4's index-linked formula would result in a 0.00% credit instead of a negative credit for each of your four interest-crediting options.

MONTHLY POINT-TO-POINT

Month	Index	Monthly Increase	Capped Increase *monthly cap rate = 3.00%*
1	900.00		
2	803.25	-10.75%	-10.75%
3	834.01	3.83%	3.00%
[illegible]	844.69	1.28%	[illegible]
5	914.04	8.21%	3.00%
[illegible]	790.28	-13.54%	[illegible]
7	838.56	6.11%	3.00%
[illegible]	803.18	-4.22%	[illegible]
9	813.54	1.29%	1.29%
[illegible]	769.20	-5.45%	[illegible]
11	780.43	1.46%	1.46%
[illegible]	788.62	1.06%	[illegible]
13	809.68	2.67%	2.67%
Total of monthly capped increases			-17.21%
Annual Interest Credit - Monthly Pt-to-Pt w/ a Cap			**0.0%**

ANNUAL PT-TO-PT

Date	Index	Increase	Capped Increase *annual cap rate = 9%*
Initial	900.00		
[illegible]	809.68	-10.04%	[illegible]
Annual Interest Credit - Annual Pt-to-Pt w/ a Cap			**0.00%**

MONTHLY AVG W/ CAP

Date	Index	Increase	Capped Increase *annual cap rate = 10%*
Initial	900.00		
[illegible]	815.79	-9.36%	[illegible]
Annual Interest Credit - Monthly Average w/ Cap			**10.00%**

MONTHLY AVERAGE

Date	Index	Increase	Increase After Spread *annual spread rate = 1.5%*
Initial	900.00		
[illegible]	815.79	-9.36%	0.00%
Annual Interest Credit - Monthly Average w/ Spread			**0.00%**

With the annual reset feature, all gains from previous years are locked in – your account will never decrease as long as no withdrawals are made!

When Surrender Charges Apply

The surrender charge applies for the first 10 years on full or partial surrenders (withdrawals), and in calculating the annuity payments unless it does not apply under the conditions below.

Surrender Charges

Annuity Year	Surrender Charge Percentage
1	10%
2	10%
3	10%
4	9%
5	8%
6	7%
7	6%
8	5%
9	4%
10	3%
11	0%

The surrender charge equals the surrender charge percentage for the applicable year multiplied by the amount of account value withdrawn. Please review your annuity for the appropriate surrender charge schedule.

When Surrender Charges Do Not Apply

Surrender charges are not deducted from the account value when you request a surrender if any of the following benefits or situations, which may be provided by rider, are issued as part of or apply to your annuity:

1. You surrender 10% or less of the account value as of the prior policy anniversary, less any amounts previously surrendered in the current policy year which were not subject to surrender charges.
2. You exercise an annuity option after the 5th anniversary or later.
3. You are confined to a licensed nursing home for more than 60 days and the confinement begins after the first annuity year (the surrender must be made during the period of confinement).
4. A licensed physician certifies that you have been diagnosed with an illness or condition that causes your life expectancy to be less than one year (the diagnosis must be at least one year after the annuity's date of issue).
5. Your unemployment began after the date of issue, has continued for at least 30 consecutive days, and you are under the age of 65 at the time of your request (the surrender must be made during the period of unemployment).
6. When the death benefit is paid, unless the spouse of the first owner to die continues ownership of the annuity and subsequently surrenders the annuity.

Note that if you fully surrender the annuity or exercise one of the options because of the circumstances described above, the surrender value will equal the greater of the account value or the minimum guaranteed surrender value.

Taxation of Withdrawals

Withdrawals may be subject to income tax. If withdrawals are made before age 59½, they also may be subject to an IRS penalty tax. Please consult your tax advisor regarding your unique situation.

Minimum Required Distributions

Certain tax qualified annuities are subject to minimum required distributions which generally require that distributions begin no later than your attainment of age 70½ and that amounts be paid to you over a period not longer than your life expectancy.

Right to Examine Annuity

This annuity includes a right of examination period. This means that within the specified time period after you receive your annuity, you may return the annuity and receive a refund of 100% of the premium paid, minus any prior withdrawals.

Financial Security

Your annuity values are guaranteed solely by OM Financial Life Insurance Company. As a Legal reserve Company, OM Financial Life is required by state regulation to maintain reserves equal to or greater than guaranteed surrender values.

Questions?

If you have any questions, call our service center at 888-513-8797.

Notes

This document is not a legal contract. For the exact terms and conditions, refer to the contract.

Form Numbers: FGL FPDA-ST (6-04); FGL FPDA-ST-C (6-04); FGL FPDA-ST (6-04) 10-10S; FGL FPDA-ST-C (6-04) 10-10S;et al.

Interest rates subject to change and are effective annual rates.

Indexed interest rates are subject to a cap

Annuities are a long-term investment to help with retirement income needs.

"Standard & Poor's®", "S&P®", "S&P 500®", "Standard & Poor's 500" and "500" are trademarks of The McGraw-Hill Companies, Inc. and have been licensed for use by OM Financial Life Insurance Company. The product is not sponsored, endorsed, sold, or promoted by Standard & Poor's and Standard & Poor's makes no representation regarding the advisability of purchasing the product.

Policies issued by OM Financial Life Insurance Company, Baltimore, MD.

Instructions for Agent

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1. Review this brochure with the customer(s).
2. Have the customer(s) sign and date the Confirmation Statement.
3. In the box marked "For Agent Use", fill-in your name and address, and sign.
4. Detach and return the Confirmation Statement with the application to OM Financial Life.

If this is a 403(b) TSA transfer or rollover, please make sure the "Purpose of Annuity" block of the application looks like this:

	O O Name ____________ SSN ____________
Plan	O Nonqualified O Traditional IRA O Roth IRA O SEP IRA ● Tax-Sheltered Annuity O §401 O Other (specify plan type): ____________
Replacement	Do you have an existing life insurance or annuity policy? O Yes O No Will the annuity applied for replace or change an existing life insurance or annuity policy? O Yes O No *If a 1035 Exchange or 90-24 Transfer, attach applicable forms.* Transfer/Exchange Amount: $____________ Policy/Certificate No.: ____________ Company: ____________
Premium/ Option	1 Year S&P 500 Index – Monthly Pt-to-Pt w/Cap ____% of premium 1 Year S&P 500 Index – Monthly Avg. w/Cap ____% of premium **Initial/Single Premium Paid:** (premium paid with application)

Confirmation Statement

Please sign below to indicate your understanding. This form must be detached and returned with the application to OM Financial Life.

By signing here, you are telling us that you have read this summary and understand the descriptions of the Safety Index 10 indexed annuity features. You are also telling us that neither OM Financial Life nor your agent has made any guarantees or promises regarding future index values, index changes, index credits or interest rates under the annuity.

I understand that the Company offers index annuity products with different features and benefits and that I can also apply for those products by contacting the Company or one of its agents.

______________________________ Signature of Owner ______________ Date

______________________________ Signature of Joint Owner, if any ______________ Date

For Agent Use:

The agent has received a copy of, has carefully read and has complied with the Safety Index 10 Agent Training Manual and the OM Financial Life Market Conduct Guide.

______________________________ Agent ______________________________ Signature of Agent

______________________________ Agency Address ______________________________ City, State, Zip

☐ Option 1 ☐ Option 2 ☐ Option 3

Annuity Application

Product: Safety Index 10 ○ SPDA ● FPDA

OM Financial Life Insurance Company • Home Office: Baltimore, Maryland

Owner(s)

Name: ______________________ Joint Owner (if any): ______________________
SSN or TAX ID: ______________________ SSN or TAX ID: ______________________
○ Male ○ Female Birth Date: __________ ○ Male ○ Female Birth Date: __________
Address: ______________________ Address: ______________________
Phone No.: (______) ______________________ Phone No.: (______) ______________________
Relationship to Owner: ______________________

Annuitant(s)
(if other than Owner)

Name: ______________________ Joint/Contingent (if any): ______________________
SSN: ______________________ SSN: ______________________
○ Male ○ Female Birth Date: __________ ○ Male ○ Female Birth Date: __________
Address: ______________________ Address: ______________________

Beneficiary

Primary	Contingent		
○	○	Name ______________________	SSN __________
○	○	Name ______________________	SSN __________
○	○	Name ______________________	SSN __________
○	○	Name ______________________	SSN __________

Plan

○ Nonqualified ○ Traditional IRA ○ Roth IRA ○ SEP IRA ○ Tax-Sheltered Annuity
○ §401 ○ Other (specify plan type): ______________________

Replacement

Do you have an existing life insurance or annuity policy? ○ Yes ○ No
Will the annuity applied for replace or change an existing life insurance or annuity policy? ○ Yes ○ No
If a 1035 Exchange or 90-24 Transfer, attach applicable forms. Transfer/Exchange Amount: $__________
Policy/Certificate No.: ______________________ Company: __________

Premium/Option
Make check payable to OM Financial Life Insurance Company.

1 Year S&P 500 Index – Monthly Pt-to-Pt w/Cap	______% of premium	**Initial/Single Premium Paid:** (premium paid with application) $__________
1 Year S&P 500 Index – Monthly Avg. w/Cap	______% of premium	
1 Year S&P 500 Index – Annual Pt-to-Pt w/ Cap	______% of premium	Minimum of $2,000 per option.
1 Year S&P 500 Index – Monthly Avg. w/Spread	______% of premium	Whole percentages only.
Fixed Interest	______% of premium	Must equal 100%.

Special Instructions

____

I (We) have read the statements made in this application. To the best of my (our) knowledge and belief, the statements made are complete, true, and correctly recorded. I (We) understand that: a copy of this application page will form a part of any annuity issued; the annuity will not take effect until delivered to the Owner; and no agent has the authority to modify any annuity issued.

Fraud Warning Notice: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and may subject such person to criminal and civil penalties.

→ Signed at ______________________ Date: __________
→ Signature(s) of Owner(s): ______________________ ______________________
→ Signature(s) of Annuitant(s): ______________________ ______________________

Agent Use Only: Does the applicant have an existing life or annuity policy? ○ Yes ○ No
To the best of your knowledge, does this application replace or change existing life insurance or annuities? ○ Yes ○ No
I attest that I have witnessed all signatures.

Agent's Signature: ______________________ Date: __________
Print Agent's Name: ______________________ OM Financial Life Agent #: __________
Agent's Phone No.: (______) __________ Agent's Fax No.: __________ Agent's Email Address: __________

Safety Index® 7

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1-year annual point-to-point with a cap, 1-year monthly average with a cap, 1-year monthly average with a spread and a fixed interest option. On the application, you can allocate your premiums among these five options. You may reallocate your account value between these options on each annuity anniversary.Interest rates are subject to change except as guaranteed.

Index Interest Options

If you choose to allocate some or all of your premiums to the index interest options, your interest credits will be credited annually based on formulas linked to changes in the monthly averaged or point-to-point values in the index, with each option subject to either a cap rate or spread rate. The cap rate is the maximum percentage applied on each anniversary as part of the total calculation for the annual index interest credit. The cap rate is declared in advance. The spread rate is a percentage declared in advance which is deducted as part of the calculation of the annual index interest credit. The monthly point-to-point index changes are subject to a cap that will never be less than one percent per month. The annual point-to-point and annual monthly average index changes are subject to caps that will never be less than three percent per year. The annual monthly average index spread rate will never be greater than nine percent per year. These index interest options may result in no interest credits, but the credit will never be less than zero.

Index interest credits are not calculated or credited between index interest crediting dates; consequently, amounts surrendered between index interest crediting dates will not earn any interest credits. Any interest credit is applied to your annuity on its annual anniversary and is locked-in, so future decreases in any index will not affect the interest already credited to your annuity.

Fixed Interest Crediting

If you choose to allocate some or all of your premium to the fixed-interest option, interest is credited daily. The issued annuity will show the credited interest rate applicable for the first seven years. After the initial guarantee period, we will declare a new current rate annually and will never credit less than 3%.

Minimum Guaranteed Surrender Value (MGSV)

Your Safety Index 7 annuity contains a protective floor that increases with interest on your cash surrender value for the index interest options. The minimum guaranteed surrender value on a full surrender is 100% of premium, plus daily interest accruing at 3% less any current surrender charges. MGSV is reduced by prior withdrawals and adjusted for any reallocations.

Payment in the Event of Death or Annuity Payout Options

Should you die before electing to receive income payments, the account value will be paid to the beneficiary named in your annuity. If you choose to receive annuity payments, and the annuity date is after the fifth certificate anniversary, we will apply the greater of the account value or the minimum guaranteed surrender value to the annuity option then in effect. If the annuity date is before the fifth certificate anniversary, we will apply the greater of the surrender value or the minimum guaranteed surrender value to the annuity option then in effect.

Account Value

The annuity's account value before the annuity date consists of the fixed interest option's account value plus the indexed interest options account value.

Surrender Value

For a full surrender, the surrender value is the greater of:

- Total account value, less surrender charges; or
- Total minimum guaranteed surrender value

No Initial Sales Charges or Fees

There are no initial sales charges or fees. Your full initial premium is available to earn interest from the date your annuity is issued. Annuities are issued with an issue date of the 1st, 8th, 15th and 22nd of each month. Premium checks will be held without interest, *until the next available* issue date. In order to be issued with the next available issue date, applications must be received no later than 5:00 p.m. (Eastern time) two business days prior to that issue date.

For special rules about issue dates that fall on holidays or weekends, contact OM Financial Life. The minimum initial premium is $15,000 and the minimum allocation to any option is $2,000.

How Index-Linked Interest Crediting Works

One-Year Monthly Point-to-Point with a Cap

The monthly point-to-point index change is determined by subtracting the prior month's index value from current month's index value and dividing it by the prior month's index value. If this results in a positive monthly point-to-point index change and is not more than the declared cap, then it is used as the index change for that month. If it is more than the declared cap, then we use the declared cap as the index change for that month. Negative monthly point-to-point index changes are also applicable.

An index change for each month is captured over a 12-month period. The sum of the 12 monthly index changes will be the index credit rate on the index crediting date. The index credit rate is multiplied by the option's account value to determine the index interest credit.

One-Year Annual Point-to-Point with a Cap

The annual point-to-point index change is determined by subtracting the prior year's index value from the current year's index value and dividing it by the prior year's index value. If this results in a positive annual point-to-point index change and is not more than the declared cap, then it is used as the index change for that year. If it is more than the declared cap, then we use the declared cap as the index change for that year.

A negative annual point-to-point index change is not subject to a cap. The index change will be the index credit rate on the index crediting date. The index credit rate is multiplied by the option's account value to determine the index interest credit.

One-Year Monthly Average with a Cap

The index values are measured at one-month intervals from the month after the prior anniversary to the month of the anniversary inclusive. The index average is the average of the index values of the twelve months during each year. The index change (which is calculated on the anniversary) is the index average minus the index value on the prior anniversary; divided by the index value on the prior anniversary. If the index change results in a positive index change and is not more than the declared cap, then it is used as the index change for that year. If it is more than the declared cap, then we use the declared cap as the index change for that year. This "averaging" formula helps smooth out the index values used to calculate your index-linked interest rate, which helps protect your interest rate gains from severe declines in the index during the interest crediting period. This averaging method may also reduce the amount of interest that could be earned if the index rises steadily throughout the year or increases sharply at the end of the year.

One-Year Monthly Average with a Spread

The index values are measured at one-month intervals from the month after the prior anniversary to the month of the anniversary inclusive. The index average is the average of the index values of the twelve months during each year. The index change (which is calculated on the anniversary) is the index average minus the index value on the prior anniversary; divided by the index value on the prior anniversary. A spread rate, declared annually, is deducted from the index change to determine the final index credit. This "averaging" formula helps smooth out the index values used to calculate your index-linked interest rate, which helps protect your interest rate gains from severe declines in the index during the interest crediting period. If the spread rate reaches 9%, the option would be suspended, and any funds in this option will be allocated uniformly across the remaining index interest options.

You are purchasing fixed index annuity that provides minimum guaranteed surrender values. You should understand how your minimum guaranteed surrender values are determined and the features of the product that are used to determine the values. Even though the values of the annuity may be affected by external indices, this product is not an investment in the stock market and does not participate in any stock, bond or indexed investments.

Hypothetical Examples

The following examples are not intended to be representations of past or future performance of Safety Index 7. These examples use hypothetical caps and index value changes.

Steadily increasing index

Assume the index rises steadily. Safety Index 7's index-linked formula results in the following interest credit for monthly point-to-point, monthly average, and annual point-to-point index options.

MONTHLY POINT-TO-POINT

Month	Index	Monthly Increase	Capped Increase *monthly cap rate = 3.00%*
1	900.00		
[illegible]	909.30	1.03%	[illegible]
3	911.20	0.21%	0.21%
[illegible]	913.30	0.23%	[illegible]
5	914.40	0.12%	0.12%
[illegible]	[illegible]	[illegible]	[illegible]
7	922.80	0.16%	0.16%
[illegible]	[illegible]	[illegible]	[illegible]
9	928.10	0.21%	0.21%
[illegible]	[illegible]	[illegible]	[illegible]
11	947.30	1.13%	1.13%
[illegible]	[illegible]	[illegible]	[illegible]
13	972.10	2.01%	2.01%
Total of monthly capped increases			7.74%
Annual Interest Credit - Monthly Pt-to-Pt w/ a Cap			**7.74%**

ANNUAL PT-TO-PT

Date	Index	Increase	Capped Increase *annual cap rate = 9%*
Initial	900.00		
[illegible]	[illegible]	8.01%	[illegible]
Annual Interest Credit - Annual Pt-to-Pt w/ a Cap			**8.01%**

MONTHLY AVG W/ CAP

Date	Index	Increase	Capped Increase *annual cap rate = 10%*
Initial	900.00		
[illegible]	[illegible]	3.29%	[illegible]
Annual Interest Credit - Monthly Average w/ Cap			**3.29%**

MONTHLY AVG W/ SPREAD

Date	Index	Increase	Increase After Spread *annual spread rate = 1.5%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Monthly Average w/ Spread			**1.79%**

Sharply increasing index

Assume the index rises sharply. Safety Index 7's index-linked formula results in the following interest credit for monthly point-to-point, monthly average, and annual point-to-point index options.

MONTHLY POINT-TO-POINT

Month	Index	Monthly Increase	Capped Increase *monthly cap rate = 3.00%*
1	900.00		
[illegible]	925.65	[illegible]	[illegible]
3	923.61	-0.22%	-0.22%
[illegible]	939.13	[illegible]	[illegible]
5	1004.96	7.01%	3.00%
[illegible]	[illegible]	[illegible]	[illegible]
7	1014.43	0.61%	0.61%
[illegible]	[illegible]	[illegible]	[illegible]
9	1041.15	0.79%	0.79%
[illegible]	[illegible]	[illegible]	[illegible]
11	1116.78	7.36%	3.00%
[illegible]	[illegible]	[illegible]	[illegible]
13	1126.51	0.28%	0.28%
Total of monthly capped increases			14.65%
Annual Interest Credit - Monthly Pt-to-Pt w/ a Cap			**14.65%**

ANNUAL PT-TO-PT

Date	Index	Increase	Capped Increase *annual cap rate = 9%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Annual Pt-to-Pt w/ a Cap			**9.00%**

MONTHLY AVG W/ CAP

Date	Index	Increase	Capped Increase *annual cap rate = 10%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Monthly Average w/ Cap			**10.00%**

MONTHLY AVG W/ SPREAD

Date	Index	Increase	Increase After Spread *annual spread rate = 1.5%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Monthly Average w/ Spread			**12.36%**

Upside Potential

Principal Protection

Minimum Interest Guaranteed on Surrender Value

Steadily increasing and a sharp drop in the index

Assume the index rises steadily, sharply drops and then sharply increases. Safety Index 7's index-linked formula results in the following interest credit for monthly point-to-point, monthly average, and annual point-to-point index options.

MONTHLY POINT-TO-POINT

Month	Index	Monthly Increase	Capped Increase *monthly cap rate = 3.00%*
1	900.00		
[illegible]	[illegible]	9.25%	[illegible]
3	1020.91	3.83%	3.00%
[illegible]	[illegible]	[illegible]	[illegible]
5	1118.87	8.21%	3.00%
[illegible]	[illegible]	-13.54%	[illegible]
7	1026.48	6.11%	3.00%
[illegible]	[illegible]	[illegible]	[illegible]
9	995.84	1.29%	1.29%
[illegible]	[illegible]	[illegible]	[illegible]
11	1077.38	6.16%	3.00%
[illegible]	[illegible]	[illegible]	[illegible]
13	1123.73	2.67%	2.67%
Total of monthly capped increases			5.98%
Annual Interest Credit - Monthly Pt-to-Pt w/ a Cap			**5.98%**

ANNUAL PT-TO-PT

Date	Index	Increase	Capped Increase *annual cap rate = 9%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Annual Pt-to-Pt w/ a Cap			**9.00%**

MONTHLY AVG W/ CAP

Date	Index	Increase	Capped Increase *annual cap rate = 10%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Monthly Average w/ Cap			**10.00%**

MONTHLY AVG W/ SPREAD

Date	Index	Increase	Increase After Spread *annual spread rate = 1.5%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Monthly Average w/ Spread			**13.69%**

Decreasing index

Assume the index decreases throughout the year and ends with a decrease. Safety Index 7's index-linked formula would result in a 0.00% credit instead of a negative credit for each of your four interest-crediting options.

MONTHLY POINT-TO-POINT

Month	Index	Monthly Increase	Capped Increase *monthly cap rate = 3.00%*
1	900.00		
[illegible]	[illegible]	-10.75%	[illegible]
3	834.01	3.83%	3.00%
[illegible]	[illegible]	[illegible]	[illegible]
5	914.04	8.21%	3.00%
[illegible]	[illegible]	[illegible]	[illegible]
7	838.56	6.11%	3.00%
[illegible]	[illegible]	[illegible]	[illegible]
9	813.54	1.29%	1.29%
[illegible]	[illegible]	[illegible]	[illegible]
11	780.43	1.46%	1.46%
[illegible]	[illegible]	[illegible]	[illegible]
13	809.68	2.67%	2.67%
Total of monthly capped increases			-17.21%
Annual Interest Credit - Monthly Pt-to-Pt w/ a Cap			**0.0%**

ANNUAL PT-TO-PT

Date	Index	Increase	Capped Increase *annual cap rate = 9%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Annual Pt-to-Pt w/ a Cap			**0.00%**

MONTHLY AVG W/ CAP

Date	Index	Increase	Capped Increase *annual cap rate = 10%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Monthly Average w/ Cap			**10.00%**

MONTHLY AVERAGE

Date	Index	Increase	Increase After Spread *annual spread rate = 1.5%*
Initial	900.00		
[illegible]	[illegible]	[illegible]	[illegible]
Annual Interest Credit - Monthly Average w/ Spread			**0.00%**

With the annual reset feature, all gains from previous years are locked in – your account will never decrease as long as no withdrawals are made!

When Surrender Charges Apply

The surrender charge applies for the first 7 years on full or partial surrenders (withdrawals), and in calculating the annuity payments unless it does not apply under the conditions below.

Surrender Charges

Annuity Year	Surrender Charge Percentage
1	10%
2	10%
3	10%
4	9%
5	8%
6	7%
7	6%
8	0%

The surrender charge equals the surrender charge percentage for the applicable year multiplied by the amount of account value withdrawn. Please review your annuity for the appropriate surrender charge schedule.

When Surrender Charges Do Not Apply

Surrender charges are not deducted from the account value when you request a surrender if any of the following benefits or situations, which may be provided by rider, are issued as part of or apply to your annuity:

1. You surrender 10% or less of the account value as of the prior policy anniversary, less any amounts previously surrendered in the current policy year which were not subject to surrender charges.
2. You exercise an annuity option after the 5th anniversary or later.
3. You are confined to a licensed nursing home for more than 60 days and the confinement begins after the first annuity year (the surrender must be made during the period of confinement).
4. A licensed physician certifies that you have been diagnosed with an illness or condition that causes your life expectancy to be less than one year (the diagnosis must be at least one year after the annuity's date of issue).
5. Your unemployment began after the date of issue, has continued for at least 30 consecutive days, and you are under the age of 65 at the time of your request (the surrender must be made during the period of unemployment).
6. When the death benefit is paid, unless the spouse of the first owner to die continues ownership of the annuity and subsequently surrenders the annuity.

Note that if you fully surrender the annuity or exercise one of the options because of the circumstances described above, the surrender value will equal the greater of the account value or the minimum guaranteed surrender value.

Taxation of Withdrawals

Withdrawals may be subject to income tax. If withdrawals are made before age 59½, they also may be subject to an IRS penalty tax. Please consult your tax advisor regarding your unique situation.

Minimum Required Distributions

Certain tax qualified annuities are subject to minimum required distributions which generally require that distributions begin no later than your attainment of age 70½ and that amounts be paid to you over a period not longer than your life expectancy.

Right to Examine Annuity

This annuity includes a right of examination period. This means that within the specified time period after you receive your annuity, you may return the annuity and receive a refund of 100% of the premium paid, minus any prior withdrawals.

Financial Security

Your annuity values are guaranteed solely by OM Financial Life Insurance Company. As a Legal reserve Company, OM Financial Life is required by state regulation to maintain reserves equal to or greater than guaranteed surrender values.

Questions?

If you have any questions, call our service center at 888-513-8797.

Notes

This document is not a legal contract. For the exact terms and conditions, refer to the contract.

Form Numbers: FGL FPDA-ST (6-04); FGL FPDA-ST-C (6-04); FGL FPDA-ST (6-04) 10-7S; FGL FPDA-ST-C (6-04) 10-7S; et al.

This product is offered on a group or individual basis as determined by state availability.

Subject to state availability. Certain restrictions may apply.

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Policies issued by OM Financial Life Insurance Company, Baltimore, MD.

Instructions for Agent

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1. Review this brochure with the customer(s).
2. Have the customer(s) sign and date the Confirmation Statement below.
3. In the box marked "For Agent Use," fill in your name and address, and sign below.
4. Detach and return this page with the application to OM Financial Life.

If this is a 403(b) TSA transfer or rollover, please make sure the "Purpose of Annuity" block of the application looks like this:

	❍ ❍ Name ______ SSN ______
Plan	❍ Nonqualified ❍ Traditional IRA ❍ Roth IRA ❍ SEP IRA ☒ Tax-Sheltered Annuity ❍ §401 ❍ Other (specify plan type): ______
Replacement	Do you have an existing life insurance or annuity policy? ❍ Yes ❍ No Will the annuity applied for replace or change an existing life insurance or annuity policy? ❍ Yes ❍ No *If a 1035 Exchange or 90-24 Transfer, attach applicable forms.* Transfer/Exchange Amount: $______ Policy/Certificate No.: ______ Company: ______
	1 Year S&P 500 Index – Monthly Pt-to-Pt w/Cap _____% of premium **Initial/Single Premium Paid:**

CONFIRMATION STATEMENT

Please sign below to indicate your understanding. This form must be detached and returned with the application to OM Financial Life.

By signing here, you are telling us that you have read this summary and understand the descriptions of the Safety Index 7 indexed annuity features. You are also telling us that neither OM Financial Life nor your agent has made any guarantees or promises regarding future index values, index changes, index credits or interest rates under the annuity.

I understand that the Company offers index annuity products with different features and benefits and that I can also apply for those products by contacting the Company or one of its agents.

➔ ______________________________ ______________
Signature of Owner **Date**

➔ ______________________________ ______________
Signature of Joint Owner, if any **Date**

For Agent Use:

The agent has received a copy of, has carefully read and has complied with the Safety Index 7 Agent Training Manual and the OM Financial Life Market Conduct Guide.

➔ ______________________ ______________________
Agent **Signature of Agent**

➔ ____
Agency Address **City, State, Zip**

☐ Option 1 ☐ Option 2 ☐ Option 3

Annuity Application

Product: Safety Index 7 ○ SPDA ● FPDA

OM Financial Life Insurance Company • Home Office: Baltimore, Maryland

Owner(s)

Name: ____________ Joint Owner (if any): ____________
SSN or TAX ID: ____________ SSN or TAX ID: ____________
○ Male ○ Female Birth Date: ____________ ○ Male ○ Female Birth Date: ____________
Address: ____________ Address: ____________
Phone No.: (____) ____________ Phone No.: (____) ____________
Relationship to Owner: ____________

Annuitant(s) *(if other than Owner)*

Name: ____________ Joint/Contingent (if any): ____________
SSN: ____________ SSN: ____________
○ Male ○ Female Birth Date: ____________ ○ Male ○ Female Birth Date: ____________
Address: ____________ Address: ____________

Beneficiary

Primary	Contingent		
○	○	Name ____________	SSN ____________
○	○	Name ____________	SSN ____________
○	○	Name ____________	SSN ____________
○	○	Name ____________	SSN ____________

Plan

○ Nonqualified ○ Traditional IRA ○ Roth IRA ○ SEP IRA ○ Tax-Sheltered Annuity
○ §401 ○ Other (specify plan type): ____________

Replacement

Do you have an existing life insurance or annuity policy? ○ Yes ○ No
Will the annuity applied for replace or change an existing life insurance or annuity policy? ○ Yes ○ No
If a 1035 Exchange or 90-24 Transfer, attach applicable forms. Transfer/Exchange Amount: $____________
Policy/Certificate No.: ____________ Company: ____________

Premium/ Option

Make check payable to OM Financial Life Insurance Company.

1 Year S&P 500 Index – Monthly Pt-to-Pt w/Cap	____% of premium
1 Year S&P 500 Index – Monthly Avg. w/Cap	____% of premium
1 Year S&P 500 Index – Annual Pt-to-Pt w/ Cap	____% of premium
1 Year S&P 500 Index – Monthly Avg. w/Spread	____% of premium
Fixed Interest	____% of premium

Initial/Single Premium Paid:
(premium paid with application)
$____________
Minimum of $2,000 per option.
Whole percentages only.
Must equal 100%.

Special Instructions

____

I (We) have read the statements made in this application. To the best of my (our) knowledge and belief, the statements made are complete, true, and correctly recorded. I (We) understand that: a copy of this application page will form a part of any annuity issued; the annuity will not take effect until delivered to the Owner; and no agent has the authority to modify any annuity issued.

Fraud Warning Notice: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and may subject such person to criminal and civil penalties.

→ Signed at ____________ Date: ____________
→ Signature(s) of Owner(s): ____________ ____________
→ Signature(s) of Annuitant(s): ____________ ____________

Agent Use Only: Does the applicant have an existing life or annuity policy? ○ Yes ○ No
To the best of your knowledge, does this application replace or change existing life insurance or annuities? ○ Yes ○ No
I attest that I have witnessed all signatures.

Agent's Signature: ____________ Date: ____________
Print Agent's Name: ____________ OM Financial Life Agent #: ____________
Agent's Phone No.: (____) ____________ Agent's Fax No.: ____________ Agent's Email Address: ____________

Consider all the facts and alternatives, then make your own decision.

OM Financial Life offers a diverse portfolio of fixed and indexed interest and variable annuities and optional additional features. Before purchasing, consider your financial situation and alternatives available to you. Your OM Financial Life financial professional can help you determine the best alternatives for your goals and needs, or visit us at www.omfn.com for more information.

No financial institution guarantee. • Not FDIC/NCUA/NCUSIF insured. • May lose value if surrendered early.

OLD MUTUAL®
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THE THINKING IS NEW. THE NAME IS OLD MUTUAL.™

Thank You* for choosing a *SecurePlus Gold.* To acknowledge that you have read and the agent has explained how your Flexible Premium Indexed and Declared Interest Annuity works, please initial each page, and sign/date this summary at the end.

LSW's Multi-Account Indexed Annuity

SecurePlus Gold is an Indexed and Declared Interest Rate Annuity

SecurePlus Gold is a flexible premium deferred annuity† issued by Life Insurance Company of the Southwest (LSW). It is not a mutual fund, variable annuity, or any instrument that participates directly in stock or equity investments. Unlike mutual funds and stock or equity investments, *SecurePlus Gold* is an annuity with important insurance features, such as the tax deferral, Death Benefit**, and annuitization features. *SecurePlus Gold* also differs from variable annuities in that it offers protection from market loss, a feature not always found in variable annuities.

SecurePlus Gold will accept additional premiums at any time and has been designed for long-term retirement planning. *SecurePlus Gold* is generally similar to all other LSW fixed annuities except for the interest crediting features described later.

* *When we use the words "you" and "your" in this Summary, we mean the Owner of a SecurePlus Gold.*

† *SecurePlus Gold is LSW Policy Form Nos. 7912, 7918, and 7938.*

** *Some words and phrases that are capitalized in this document are defined in the policy form.*

 I have read and the agent has explained the information presented on this page. ________(initial)

Tax-Deferred Accumulation*

SecurePlus Gold provides tax-deferred accumulation. All amounts in your annuity accumulate with federal income tax deferred until withdrawn. This tax deferral feature has two primary benefits. First, interest compounds on amounts you would otherwise pay in taxes during the accumulation period. Second, you may be in a lower tax bracket when you receive taxable interest than you are today.

You are liable for any tax on withdrawals. If you make a withdrawal before age 59½, you may be subject to an IRS 10% penalty.

This is our understanding of the current tax law. Neither LSW nor any of its agents or representatives give legal, tax, or accounting advice. Please consult your own tax advisor for tax advice.

Death Benefit

If you are the Annuitant and you die while this annuity is in force, LSW will pay the greater of the Accumulation Value or the Policy Value (these are described later) to your Beneficiary as a Death Benefit and will waive any remaining Withdrawal Charges. If you die and are the Owner but not the Annuitant, the Death Benefit will equal the Cash Value (this is described later). If death occurs after a Payment Option has been selected, any payments which remain to be paid under your election will be paid to your Beneficiary.

Annuitization

The Annuity Date is shown on Page 3 of your Policy. *SecurePlus Gold* guarantees that on the Annuity Date, you may choose to have the value of your annuity applied to provide a stream of payments. Your options range from a 10-year certain payout to a payment stream you cannot outlive. The amount of any payment depends in part on annuitization rates then in effect. Your *SecurePlus Gold* specifies certain guaranteed annuitization rates.

SecurePlus Gold Accumulation Value

Premium Account

+

Interest Accounts

=

Accumulation Value

Each premium payment is placed in the Premium Account on the day received. The Premium Account is credited with interest to the next 21st of a calendar month (unless the premium is received on the 21st of a calendar month). Then we transfer, on the 21st of each calendar month, all amounts in the Premium Account to new Interest Accounts. We maintain each Interest Account separately. The period from the 21st of the month when an Interest Account is started to the 21st of the same month in the next year, and each one-year period thereafter, is an Account Year for that Account.

Premium Account Example

If you pay multiple premiums, your *SecurePlus Gold* will have a like number of Interest Accounts, each with its own Account Year. The sum of all Interest Accounts plus the Premium Account is your Accumulation Value.

Premium Account Example

If we receive a premium from you on September 27th, the premium is kept in the Premium Account, earning interest, until the next October 21st. Then the amount in the Premium Account is transferred to new Interest Account(s). Interest Accounts will have recurring Account Years that are measured from each October 21st to October 21st of the next following year.

Interest Crediting Options

An important feature of SecurePlus Gold is that you may choose among three methods to determine the interest credited to each of your Interest Accounts. The types of Interest Accounts available to you include Declared Interest Accounts and two Indexed Interest Accounts:

- Ending Index Indexed Interest Accounts (Ending Index Accounts)
  and
- Average Index Indexed Interest Accounts (Average Index Accounts)

Because you may pay multiple premiums, there can be multiple accounts of any of these types.

* *Annuities owned by trusts or corporate entities do not generally enjoy the tax deferral feature.*

I have read and the agent has explained the information presented on this page. ________ (initial)

Declared Interest Accounts

A Declared Interest Account is an Interest Account for which interest is credited daily at a declared effective annual interest rate. LSW sets the rate in advance each Account Year. The minimum annual effective rate is guaranteed to be at least 1.95%. Here is an example. None of the examples shown here are representations of the rates that LSW will actually credit to your *SecurePlus Gold* annuity.

Declared Interest Account Example

LSW declares an effective annual interest rate at the beginning of the Account Year of 4.75%. If the Declared Interest Account had been $10,000 at the beginning of the Account Year, in one year it would grow by $475 in interest, and the Declared Interest Account would have a value of $10,475 at the end of the Account Year. This would be the beginning value of the Declared Interest Account for the next Account Year.

Indexed Interest Accounts in General

Indexed Interest Accounts give you the potential to receive higher interest than might be the case with traditional fixed-rate annuities but without subjecting your retirement savings to market risk. Indexed Interest is credited annually based, in part, on the performance of the S&P 500® Index over the Account Year. All S&P 500 Index values (Index Values) are determined at the close of trading for the day.

To determine Indexed Interest credited to an Indexed Interest Account, we calculate an Annual Percentage Change at the end of the Account Year. This calculation is defined differently for Ending Index and Average Index Accounts.

The interest rate credited to all Indexed Interest Accounts is the Index Rate (sometimes called a "participation rate") multiplied by the Annual Percentage Change. The result is subject to a minimum called the Floor and a maximum known as the Cap.

- The Index Rate is the percentage of the Annual Percentage Change that is used as described above to determine the interest credited to an Indexed Interest Account. The Index Rate can never be less than 30%.
- The Cap is the maximum interest rate that may be credited to the Indexed Interest Account for the Account Year. It is guaranteed to be no less than 3%.
- The Floor is the minimum annual interest rate that may be credited to the Indexed Interest Account. The Floor can never be less than zero.

The Index Rate, Cap, and Floor for each Indexed Interest Account are set and guaranteed by LSW annually in advance at the beginning of each Account Year. The Index Rate, Cap, and Floor in effect for premiums paid at the time your annuity is issued will be shown in your annuity.

Ending Index Accounts

The Annual Percentage Change for an Ending Index Account is equal to the percentage change in the S&P 500 Index from the S&P 500 Index Value at the beginning of the Account Year to the Index Value at the end of the Account Year. The Index Rate, Cap, and Floor LSW determines for Ending Index Accounts may not be the same as those it determines for Average Index Accounts.

The following are examples of how interest is credited to Ending Index Accounts each Account Year. These examples are only demonstrations of how the formula works in different situations and are not representations of the rates that LSW will apply to your *SecurePlus Gold* annuity or of our expectations of the S&P 500 Index.

Ending Index Account Example 1

The S&P 500 Index is 1,000 at the beginning of the Account Year and is 1,050 at the end of the Account Year. The Annual Percentage Change is 5%.

LSW had declared an Index Rate for the Ending Index Account at the beginning of the Account Year of 75% (the minimum Index Rate is 30%), a Cap of 11% (the minimum Cap is 3%), and a Floor of 0%.

Multiply the Annual Percentage Change (5%) by the Index Rate (75%). The result is 3.75%. Is this more than the Cap of 11%? No. Is it less than the Floor of 0%? No. Then the result, 3.75%, is the interest rate applied to the Ending Index Account.

If the Ending Index Account had been $10,000 at the beginning of the year, it would be credited with $375 in interest at the end of the Account Year. Then, the Ending Index Account would have a value of $10,375 at the end of the Account Year. This value would also be the beginning value of the Ending Index Account for the next Account Year.

 I have read and the agent has explained the information presented on this page. ________ (initial)

Ending Index Account Example 2

The S&P 500 Index is 1,200 at the beginning of the Account Year and is 1,500 at the end of the Account Year. The Annual Percentage Change is 25%.

LSW had declared an Index Rate for the Ending Index Account at the beginning of the Account Year of 80% (the minimum Index Rate is 30%), a Cap of 10% (the minimum Cap is 3%), and a Floor of 0%.

Multiply the Annual Percentage Change (25%) by the Index Rate (80%). The result is 20%. Is this more than the Cap of 10%? Yes. Then the rate of interest applied to the Ending Index Account for this Account Year is the Cap, 10%.

If the Ending Index Account had been $10,000 at the beginning of the year, it would be credited with $1,000 in interest at the end of the Account Year. Then, the Ending Index Account would have a value of $11,000 at the end of the Account Year. This value would also be the beginning value of the Ending Index Account for the next Account Year.

Here, the Cap was less than the Index Rate multiplied by the Annual Percentage Change. Thus, the interest was limited by the Cap.

Ending Index Account Example 3

The S&P 500 Index is 1,200 at the beginning of the Account Year and is 1,080 at the end of the Account Year. The Annual Percentage Change is -10% (minus 10%).

LSW had declared an Index Rate for the Ending Index Account at the beginning of the Account Year of 60% (the minimum Index Rate is 30%), a Cap of 12% (the minimum Cap is 3%), and a Floor of 0%.

Multiply the Annual Percentage Change (-10%) by the Index Rate (60%). The result is -6%. Is this more than the Cap of 12%? No. Is it less than the floor of 0%? Yes. Then the rate of interest applied to the Ending Index Account this Account Year is the Floor, 0%.

If the Ending Index Account had been $10,000 at the beginning of the year, it would remain at $10,000. This value would also be the beginning value for the Ending Index Account for the next Account Year.

Note that, in Example 3, the Ending Index Account retained its value even though the S&P 500 Index declined by 10% this Account Year. Increases in your Indexed Interest Accounts are locked in every year. This demonstrates one of the most important features of *SecurePlus Gold* – downside protection. Downside protection means there will be no decreases in the Indexed Interest Accounts due to a decrease in the S&P 500 Index. See the section on "What Happens if the S&P 500 Index Becomes Volatile?"

Average Index Accounts

The Annual Percentage Change for an Average Index Account is equal to the percentage change in the S&P 500 Index from the S&P 500 Index Value at the beginning of the Account Year to the average of the Index Values each day for every day the market is open during the Account Year. Because the S&P 500 Index does not move smoothly, the Annual Percentage Change for an Average Index Account may be higher or lower than the Annual Percentage Change for an Ending Index Account over the same time period.

There is no Cap for the Average Index Accounts for Account Years starting during the first 10 Policy Years. After the first 10 Policy Years, LSW will set the Cap in advance for each Account Year. The Cap is guaranteed to be at least 3%. The Index Rate, Cap, and Floor LSW determines for Average Index Accounts may not be the same as those it determines for otherwise-identical Ending Index Accounts.

Let's examine two examples for the Average Index Account.

Average Index Account Example 1

The S&P 500 Index is 1,000 at the beginning of the Account Year. There are 250 trading days during the Account Year. The sum of the Index Values for each trading day during this time is 270,000. The average Index Value is 1,080. The Annual Percentage Change is 8%.

LSW had declared an Index Rate for the Average Index Account at the beginning of the Account Year of 90% (the minimum Index Rate is 50%), no Cap, and a Floor of 0%.

Multiply the Annual Percentage Change (8%) by the Index Rate (90%). The result is 7.20%. No Cap applies. Is the result less than the Floor of 0%? No. Then the result, 7.20%, is the interest rate applied to the Average Index Account.

If the Average Index Account had been $10,000 at the beginning of the year, it would be credited with $720 in interest at the end of the Account Year. Then, the Average Index Account would have a value of $10,720 at the end of the Account Year. This value would also be the beginning value of the Average Index Account for the next Account Year.

Remember, the Index Rates, Caps, and Floors may be different for an Average Index Account than for an Ending Index Account. The magnitude of differences may vary over time. These are only examples.

Average Index Account Example 2

The S&P 500 Index is 1,000 at the beginning of the Account Year. There are 250 trading days during the Account Year. The sum of all the Index Values during this time is 237,500. The average is, then, 950. The Annual Percentage Change is -5% (minus 5%).

LSW had declared an Index Rate for the Average Index Account at the beginning of the Account Year of 85% (the minimum Index Rate is 30%), no Cap, and a Floor of 0%.

Multiply the Annual Percentage Change (-5%) by the Index Rate (85%). The result is -4.25%. No Cap applies. Is the result less than the Floor of 0%? Yes. Then the rate of interest applied to the Average Index Account this year is the Floor, 0%.

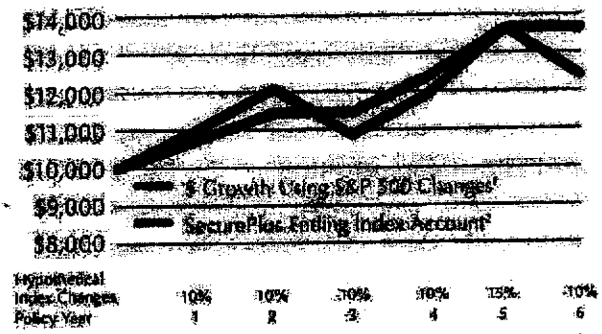
If the Average Index Account had been $10,000 at the beginning of the year, it would remain at $10,000. This value would also be the beginning value of the Average Index Account for the next Account Year.

What Happens if the S&P 500 Index Becomes Volatile?

As shown in the examples, interest previously credited to an Ending Index Account or an Average Index Account is not lost with *SecurePlus Gold* if the Annual Percentage Change is negative for any year. This interest crediting method is called the Ratchet Method. While direct investments in the marketplace must recover from a downturn, premium and credited interest in the *SecurePlus Gold* maintain their value. With *SecurePlus Gold*, a decline in the S&P 500 Index over an Account Year has no effect on the value of an Interest Account. The Index Value at the end of an Account Year becomes the beginning Index Value for the next Account Year – you have a fresh start. If the Annual Percentage Change determined at the end of the next Account Year is positive, you will earn interest on the change, even if the ending Index Value is lower than a level it reached in a prior Account Year.

Follow at right both the S&P 500 Index and a *SecurePlus Gold* Ending Index Account during a hypothetical six-year period to examine how the Ratchet Method of crediting interest is important to you. Again, this example is not meant to be representative of what will happen to your annuity.

Graph 1
Benefits of the ratchet method



Actual rates may vary and are subject to change without notice. Illustration is not representative of future results or of any applicable Index Rate. [1]Assumed changes without dividends. [2]Assumed 75% Index Rate, 10% Cap, 0% Floor. Withdrawal Charges apply for the first 10 years and are not reflected above.

We'll assume the Ending Index Account has a constant Index Rate of 75%, a Cap of 10%, and a Floor of zero. We'll track a single premium payment of $10,000 and see how it behaves and compare this with the same amount that tracks the S&P 500 Index itself. Graph 1 shows the results during this theoretical six-year period. Graph 1 illustrates two of the key features of the Ratchet Method, the potential for additional interest when the Index increases and protection of your account values when it decreases.

SecurePlus Gold uses the S&P 500 Index, an indicator widely used to measure the overall performance of the United States stock market *(equities)*. The S&P 500 Index is a market-value weighted price index which reflects capital growth only and does not include dividends paid on stocks.

We do not ever expect to change our index from the S&P 500 Index. If we ever have to, we will notify you and your state insurance department.

Premium Allocation

You indicate on your application how you wish to allocate your premium for the first Policy Year among the available Interest Accounts. After the first Policy Year, you may change the allocation for future premiums once each Policy Year. You may choose to distribute your premiums among any or all of the Interest Accounts. Your allocation must be whole percentages (for instance, 33%, 33%, and 34% respectively for the three available Interest Accounts). To change your allocations, you must do so in writing. New instructions become effective on the date we receive them and will apply to premiums received after that date.

Transfers Among Interest Accounts

Transfers between and among Interest Accounts may be made without charge. Amounts can be transferred from any type of Interest Account to another type of Interest Account only on the anniversary of the Interest Account from which the transfer is to be made and only after receipt of your written request for the transfer. Transfers from Interest Accounts are made on a LIFO basis (Last In, First Out). This means that the most recently opened Interest Accounts are transferred first. Your written request must be received 30 days before the transfer is to be made.

The rates applicable to the transferred amounts will be the same rates applied to premiums that had been in such Interest Accounts since the transfer premium was originally paid.

Following are brief examples of transferring money among accounts.

A new Interest Account is to be opened on July 21, 2005 with $100.00, and you direct that the amount be placed in a Declared Interest Account. *Assume the rate applicable to the Declared Interest* Account on July 21 is 5%. The value of the Account on July 21, 2006 would then be $105.00.

Prior to June 21, 2006 you request (in writing) that the entire amount in the Declared Interest Account be transferred to an Ending Index Account on July 21, 2006. On that date we will transfer the $105.00 from the Declared Interest Account to the Ending Index Account.

On July 21, 2006, LSW will set rates for all accounts that reset that day and will guarantee those rates for Account Years starting that day. For accounts that are one year old on that date, LSW might set a credited interest rate for the Declared Interest Account of 4.9% and an *Index Rate of 70% and a Cap of 10% for the* Ending Index Account. Note these renewal rates for monies with LSW may not be the same as the rates for Interest Accounts opened with transfers from the Premium Account on that day. They also may not be the same as the rates for Interest Accounts that are more than one year old.

The $105.00 in an Ending Index Account will start a new Account Year on July 21, 2006. Interest will be credited to the Ending Index Account on its next reset date, July 21, 2007, depending on the change in value of the S&P 500 Index between July 21, 2006 and July 21, 2007 given the Index Rate of 70% and Cap of 10% that were guaranteed *at the beginning of the* Account Year.

Assume you request by June 21, 2007 that the entire amount in the Ending Index Account be transferred to the Declared Interest Account. Assume the S&P 500 Index had increased 15% more from July 21, 2006 to July 21, 2007, and the amount credited to your Ending Index Account on July 21, 2007 is 10%. The $105.00 placed in the Ending Index Account on July 21, 2006 would have increased by $10.50 ($105.00 x 10%) in interest credited, and the amount in the Ending Index Account at the end of the Account Year would be $115.50. Per your instructions, we will transfer $115.50 to a Declared Interest Account for the next Account Year.

On July 21, 2007, LSW will set rates for all accounts being reset that day and will guarantee those rates for Account Years starting on that day. For accounts that are two years old on that date, LSW might set a credited interest rate for the Declared Interest Account of 4.85% and an Index Rate of 65% and a Cap of 10% for the Ending Index Account. Note these rates may not be the same as the rates for Interest Accounts opened with transfers from the Premium Account on that day. *They also may not be the same as the rates for Interest* Accounts that are one year old or more than two years old, either.

The $115.50 in a Declared Interest Account will start a new Account Year on July 21, 2007. Interest will be credited to the Account until July 21, 2008 at a rate of 4.85%.

Remember, the above are only an example of how the Policy operates and are not an indication of rates LSW will declare, the future of the S&P 500 Index, or amounts that may be credited to any of your Accounts.

Withdrawals

Partial Withdrawals may be taken from your annuity, subject to IRS rules. A Partial Withdrawal affects both the Accumulation Value and the Policy Value (described later). The Accumulation Value is reduced by the amount of the Partial Withdrawal including Withdrawal Charges assessed, if any.

Beginning in the second Policy Year and in each Policy Year thereafter, you may withdraw up to 10% of your annuity's Accumulation Value without a Withdrawal Charge (Free Withdrawal Amount). This feature is not cumulative. Any Withdrawal made during the first Policy Year will incur a Withdrawal Charge on the amount withdrawn. Withdrawals after the first Policy Year that exceed 10% of the annuity's Accumulation Value will incur a Withdrawal Charge on the excess over the Free Withdrawal Amount. Withdrawal Charges are applied as a percentage of the amount withdrawn in excess of the available Free Withdrawal Amount. There are no Withdrawal Charges after the 10th Policy Year.

If you elect to make a Total Withdrawal from your *SecurePlus Gold* annuity, we will pay you the Cash Value. The Cash Value is the greater of a) or b) where:

a) is the Accumulation Value minus a Withdrawal Charge, and

b) is the Policy Value defined below.

You may request that we pay the Cash Value under one of the Payment Options in your Policy. If you do so after the fifth Policy Year, we will provide an annuity based on the calculation of the Cash Value without application of Withdrawal Charges.

Because of the Withdrawal Charge, withdrawals from your *SecurePlus Gold* during the first 10 Policy Years could result in a loss of a portion of your premiums paid. See Table 1 below.

Table 1
Withdrawal Charges

Policy Year	1	2	3	4	5	6	7	8	9	10	11+
Withdrawal Charge %	10	9	8	7	6	5	4	3	2	1	0

Policy Value

SecurePlus Gold provides a guaranteed minimum value to your annuity, called the Policy Value. The Death Benefit, the annuitization benefit, and the Cash Value can never be less than the Policy Value.

The calculation of the Policy Value is independent of the calculation of the Accumulation Value for the first 10 Policy Years. The minimum Policy Value is equal to the accumulation of 90% of each premium at an annual rate of at least 1.95%, reduced by Partial Withdrawals, but not by any Withdrawal Charges assessed to the Accumulation Value.

On the 10th anniversary of the issue date and annually thereafter, the Policy Value may be increased by Excess Interest. Excess Interest is the excess of a) over b) where:

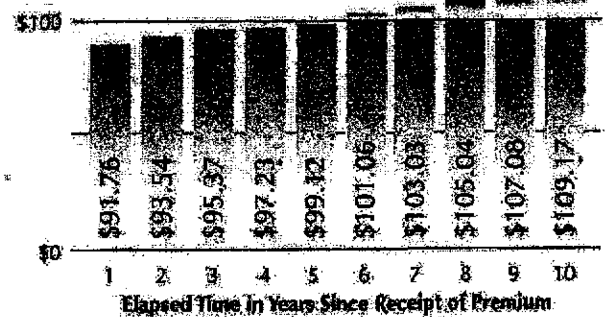
a) is total interest credited to the Accumulation Value since issue of the Policy, and

b) is total interest credited to the Policy Value since issue of the Policy.

Once Excess Interest is credited to the Policy Value, it becomes part of the Policy Value and earns interest at an annual rate of at least 1.95%.

No matter what the performance of the S&P 500 Index may be, *SecurePlus Gold* assures you that, six years after the date each premium is received, the Policy Value attributable to it will be greater than the amount of such premium. This is so, even if the S&P 500 Index Annual Percentage Change declines every year. Graph 2 shows the guaranteed minimum value for the first 10 years following payment for every $100 of premium.

Graph 2
Guaranteed Minimum Policy Value for Every $100 in Premium Paid



Right to Examine This Policy

You have a right to a complete refund of your total premium payments at any time within 30 days of receiving your annuity Policy. To exercise this right, you must return your Policy with a written request for a refund.

Premium Taxes

Some states charge a premium tax on annuities. A few states levy the tax when you pay a premium. Others charge it upon withdrawal or selection of a Payment Option. If we must pay this tax, we will deduct it from your Policy benefits.

Questions?

If you have questions, you may ask them of your agent. You may also call our Home Office. Our telephone number is 800-579-2878. When you call, please say that you have questions about your SecurePlus Gold Indexed and Declared Interest Rate Annuity. We will be glad to hear from you.

Please Tell Us If You Understand

Please do not rely on any statements about *SecurePlus Gold* that are not consistent with what is described in this Summary, in the annuity Policy form, or in other material published by LSW. In case of any ambiguity, conflict, or question regarding interpretation of this Summary or any other published material or statements, the provisions of the Policy form prevail. Please consult your annuity Policy form for further details.

 I have read and the agent has explained the information presented on this page. _______ (initial)

Disclosure Understanding/Purchase Recommendation

1. Purchase Recommendation
(Agent must initial 1a or 1b.)

_________ a. By my signature at right as Agent and by my initial here, I recommend this annuity for purchase by the Owner. I have reasonable grounds for believing this recommendation is suitable based on the facts disclosed by Owner as to his/her investments, other insurance products, and financial situation needs. I will maintain and will make available to LSW or any insurance department, upon demand by either, a copy of information collected and a listing of other information used as the basis for this recommendation for the length of time required by applicable state law. Any process that accurately reproduces the actual document may be used to maintain these records.
Agent Initials

(If Agent has initialed 1a, proceed to #2 at right. Otherwise, Agent must initial 1b below, and Owner must then initial 1c below.)

_________ b. By signature at right as Agent and by my initial here, I acknowledge that I have not received adequate information from the owner to make a recommendation as to the purchase of this annuity, and the owner is proceeding based on owner's own judgment.
Agent Initials

_________ c. By my signature at right as Owner and by my initial here, I acknowledge responsibility for the suitability of this annuity purchase for my needs. I elect not to provide the information necessary for Agent to make a recommendation to make this purchase or exchange. I have decided to enter into this annuity purchase without a recommendation from Agent.
Owner Initials

2. Understanding
My signature as "Owner" below acknowledges that I have read and the agent has explained the contents of this Summary. I initialed each page as it was reviewed. I understand this original Summary will be enclosed with my application and a copy of it will be sent with my Policy.

____
Print Owner Name

____
Owner Signature Date

____
Print Agent Name Agent No.

____
Agent Signature Date

Thank You.
We Appreciate Your Business and Your Confidence in LSW.

Life Insurance Company of the Southwest

NATIONAL LIFE GROUP®

LSW Home Office: 1300 West Mockingbird Lane, Dallas, Texas 75247
Telephone: 800-579-2878 / www.lifeofsouthwest.com

National Life Home Office: One National Life Drive
Montpelier, Vermont 05604 / Telephone: 800-277-9929
www.nationallife.com

National Life Group is a trade name of National Life Insurance Company and its affiliates. Each company of the National Life Group is solely responsible for its own financial condition and contractual obligations. LSW is not authorized to sell insurance in New York and does not do any insurance business in New York.

Allianz Life Insurance Company
of North America
PO Box 59060
Minneapolis, MN 55459-0060

Allianz

Product Suitability Form

Thank you for your interest in an Allianz annuity. Before we can process your application and issue your policy, we need to confirm that the annuity purchase *suits your current* financial situation and long-term goals. **Please complete this form in its entirety and submit with your application.**

Owner's name[1]	Age	Product name
Joint owner's name	Age	Premium amount

Annuity type ☐ Qualified ☐ Nonqualified

Your privacy is a high priority to us. The information you provide will be treated with the highest degree of confidentiality.

Financial status

1. **Approximate** current monthly **household[2] income** $____________
   - Including, but not limited to, salary, Social Security payments, pension/retirement benefits, investment and rental income
   - Do not include income currently earned on the money that will be used to purchase this annuity
2. **Approximate** current monthly **household living expenses** $____________
   - Including, but not limited to, housing, transportation, insurance, food, healthcare and taxes (include property, income, and FICA taxes)
3. **Disposable income** (current monthly household income minus current monthly household living expenses) $____________
   a. After the purchase of this annuity, will your monthly income meet or exceed your monthly expenses? ☐ Yes ☐ No
   b. The surrender period or deferral-plus-annuitization period (whichever is longer) of the annuity applied for is ____________.
   c. Do you anticipate any significant **increase in living expenses or decrease in your household's monthly income** during the surrender period or deferral-plus-annuitization period (whichever is longer)? ☐ Yes ☐ No
   - Examples of a reduction in household income might be retirement or a lower pension payment
   - Examples of increases in living expenses might be housing, medical, nursing home, assisted living, or travel expenses
   - If "yes" to 3.c, please explain (if possible, approximate when you anticipate changes in income, living expenses, and the amount)

____

____

____

4. What is your **marginal federal tax rate?** ☐ 0% ☐ 10% ☐ 15% ☐ 25% ☐ 28% ☐ 33% ☐ 35%
5. **Approximate household net worth** $____________
   - Total household assets (including premium for the annuity to be purchased but excluding primary residence and any personal belongings or personal property such as jewelry, furnishings, and vehicles)
   - Minus total debt (not including mortgage or debt owed on the primary residence)
6. **Approximate household liquid assets** $____________
   - Do not include any assets that will be used for the purchase of this annuity or any withdrawals that may be taken from this annuity
   - Include assets such as checking, savings, money market accounts, and securities that can be sold without fees or penalty
   - Do not include any personal belongings or personal property such as jewelry, furnishings, and vehicles
7. In purchasing this annuity, **what percentage of your liquid assets** will be used? ____________%
8. Do you anticipate any **significant reduction in your liquid assets** during the surrender period or the deferral-plus-annuitization period (whichever is longer)? ☐ Yes ☐ No
9. **Total value** of all annuities (include the purchase of this annuity) $____________
   - What is the total accumulation/annuitization value of all annuities you own with Allianz and other companies?
10. **Nursing home** or **assisted living facility**
    - *Does the owner* reside in a nursing home or assisted living facility? ☐ Yes ☐ No

NOTE: PLEASE REMOVE THIS FORM FROM PACKET BEFORE COMPLETING THE APPLICATION.

[1] For trust and corporate owned contracts, see agent guide for instructions on completion of form
[2] Household means the owner and spouse/partner, if a member of the owner's household

[redacted]

Allianz Life Insurance Company
of North America
PO Box 59060
Minneapolis, MN 55459-0060

Allianz

Product Suitability Form

Financial objectives

1. What are your **financial objectives** in purchasing this product? **(check all that apply)**
   ☐ Income now ☐ Guarantees provided ☐ Growth potential ☐ Growth followed by income
   ☐ Tax-deferred growth ☐ Pass on to beneficiaries ☐ Other________________
2. *What other **financial products** do you own or have you previously owned?* **(check all that apply)**
   ☐ None ☐ Certificates of deposit ☐ Fixed annuities ☐ Variable annuities ☐ Stocks/bonds/mutual funds
3. What is your **source** for this annuity's premium? **(check all that apply)**
   ☐ Annuity ☐ Life insurance ☐ Certificates of deposit ☐ Other investments
   ☐ Reverse mortgage/home equity loan ☐ Savings/checking
4. Is this a **replacement** of an annuity or life contract? ☐ Yes ☐ No
   a. **If yes,** what type(s)? ☐ Fixed ☐ Fixed index ☐ Variable
   b. If yes, is there a surrender charge? ☐ Yes ☐ No
   c. **If there is a surrender charge,** what is it on each contract being replaced? __% __% __% __%

Accessing your money

1. **How** do you anticipate taking **distributions** from this annuity? **(check all that apply)**
   ☐ Free/systematic withdrawals ☐ Annuitize ☐ Required minimum distribution ☐ Enhanced Withdrawal Benefit
   ☐ Lump sum ☐ Loans ☐ Leave to beneficiary ☐ Immediate income
2. **When** do you anticipate taking your **first distribution** from this annuity? **(choose one)**
   ☐ Less than one year ☐ Between one and five years ☐ Between six and nine years
   ☐ 10 or more years ☐ None anticipated
3. **I understand** how my beneficiaries can receive the **maximum contract value?** ☐ Yes ☐ No

NOTE: If this form is not completed, signed, and dated, we cannot consider your application.

I acknowledge that I have read the Statement of Understanding for the product listed and believe it meets my needs at this time. To the best of my knowledge and belief, the information above is true and complete. I understand that I should consult my tax advisor regarding possible tax implications of the purchase of an annuity or the exchange of an existing annuity or life insurance contract.

Owner's signature		Date
Joint owner's signature		Date
Agent signature	Agent number	Date

NOTE: PLEASE REMOVE THIS FORM FROM PACKET BEFORE COMPLETING THE APPLICATION.

Annuity Suitability Acknowledgement Form

OLD MUTUAL
INVEST INSURE INNOVATE

INSURER – OM Financial Life Insurance Company

1. **THIS FORM HELPS YOU.** It is important you have the information you need to determine if purchasing a fixed annuity contract meets your needs for your financial situation. This form can help you make that determination.

2. **CUSTOMER PROFILE**

Owner's Name ____________________ Age ______ Occupation ___________________________

Monthly Disposable Income (***monthly income minus monthly expenses***): ________________

Net worth excluding equity in primary residence: _________________

What is your marginal federal tax rate? ___ **0%** ___ **10%** ___ **15%** ___ **25%** ___ **28%** ___ **33%** ___ **35%**

Which goal is most important to you with respect to this OM Life Annuity you are purchasing?

__ Retirement __ Principal Protection __ Tax Deferral __ Wealth Accumulation __ Emergencies __ College Funding

__ Guaranteed Income __ Vacations

Please list the amount of current savings and investments below:

Checking/Savings/Money Market	$_________	Primary Residence	$_________
Certificates of Deposit	$_________	Other Real Estate	$_________
Fixed Annuities	$_________	Mutual Funds	$_________
Variable Annuities	$_________	Stocks/Bonds	$_________
Life Insurance Cash Value	$_________	Retirement Plans	$_________

This annuity transaction represents approximately what percentage of your assets (excluding primary home)?

☐ 0 – 25% ☐ 25% - 50% ☐ 50% - 75% ☐ 75% - 100%

Is this a replacement of an annuity or a life contract/? ____ Yes ___ No

a) **If yes,** is there a penalty for early termination (surrender charge)? ____ Yes ____ No
b) If there is a penalty or surrender charge, what percentage of the contract value being replaced will be subject to a penalty? ___0-2% ___ 3-5% ___ 6-8% ___ 9% or >

3. **ACKNOWLEDGEMENT AND SIGNATURE**

I understand that:

- I have applied for and/or purchased an annuity contract. This is NOT a short-term savings vehicle.
- The premiums I pay for the annuity contract apply to a fixed annuity contract – not a mutual fund, savings account, certificate of deposit, security or other financial product.
- Certain cash withdrawals from, or a complete surrender of, the contract are subject to certain limitations and charges as described in the contract. I understand that the annuity contract permits certain charge-free withdrawal amounts; I believe these amounts are more than sufficient to meet my income and other financial needs.
- Surrender/redemption charges/fees may be incurred as a result of liquidating existing accounts in order to fund this annuity.
- Income tax liability may be incurred as a result of withdrawals and/or liquidating my existing accounts; however, I believe this transaction to be in my best interest.
- The Agent/Representative and OM Financial Life may not offer tax advice, and I am responsible for the tax consequences, if any, related to this transaction. If needed, I will consult with my own professional tax advisor.
- The Agent/Representative and OM Financial Life may rely upon the information provided herein, and the information provided herein is true and accurate to the best of my knowledge.
- I value the product features this contract provides, including its guarantees.

______________________________________ ______________________________
Owner's Signature Date

______________________________________ ______________________________
Joint Owner's Signature (if applicable) Date

______________________________________ ______________________________
Agent Signature Date

P.O. Box 71216
Des Moines, IA 50325
888-221-1234
Fax 515-221-9947
www.american-equity.com

SUITABILITY ACKNOWLEDGEMENT

This form will assist you and your agent in determining if an American Equity annuity meets your particular financial situation. You have the legal right to decline to answer the questions below, however please be advised American Equity may elect not to issue the annuity contract for which you are applying.

Personal Information

Owner/Applicant Full Name	Joint Owner/Applicant Full Name
Owner/Applicant Occupation	Joint Owner/Applicant Occupation

Financial Information

1. Source of funds used to purchase this annuity:____________________
2. Estimated combined State and Federal Tax Bracket:____________________%
3. Estimated Net Worth (excluding home(s) and automobile(s)):$____________________
4. Approximate Gross Income
   ❑ $0 to $49,999 ❑ $50,000 to $99,999 ❑ Over $100,000
5. Financial Objectives (Check all that apply)
   ❑ Safety of Premium ❑ Death Benefit Options ❑ Supplement Retirement Income
   ❑ Probate Avoidance ❑ Tax Deferral ❑ Other____________
   ❑ Guarantees ❑ Diversity of Interest Crediting Strategies
6. Withdrawal options & surrender charge period were fully explained to me by my agent....❑ Yes ❑ No
7. Do you have sufficient liquid assets available for monthly living expenses and emergencies other than the money you plan to use to purchase this annuity contract? ....❑ Yes ❑ No
   Initial ____________
8. Are you using funds from an existing life insurance policy or annuity contract?................❑ Yes ❑ No
   a. If "yes", how long has the policy or contract been in force? ____________
9. If you answered "yes" to question 8, is there a surrender charge assessed with the existing policy or contract? ....❑ Yes ❑ No
   a. If "yes", what is the percentage? ____________%

❑ I have declined to provide some or all of the answers to the above questions.

By signing below, I acknowledge that this fixed annuity product meets my long-term financial objectives. I acknowledge my agent has fully explained the surrender charges and surrender period and I have reviewed the applicable disclosure statement with my agent in determining this fixed annuity product is suitable for my financial situation.

____________________ ____________
Owner/Applicant's Signature Date

____________________ ____________
Joint Owner/Applicant's Signature Date

Agent's Statement

❑ I have provided the Owner/Applicant a copy of the Product Disclosure for this product. Also, I have not made representations or promises about the future values of this contract that differ from the company provided materials.
❑ I have reviewed the client's financial information and acknowledge this annuity meets the client's financial needs and objectives.
❑ I have reviewed government issued photo identification for the Owner and Annuitant.

____________________ ____________
Agent's Signature Date

SUBMIT WITH APPLICATION

MIDLAND NATIONAL Life Insurance Company
4601 Westown Parkway, Suite 300
West Des Moines, IA 50266

Deferred Annuity Suitability Form

Thank you for your interest in a Midland National Annuity. Before we can process your application and issue your contract, we would like to confirm that your annuity purchase suits your current financial situation and long-term goals.

Please note that if this form is not completed in full, signed, and dated, we are unable to consider your application.

Your privacy is a high priority to us. The information you provide will be treated with the highest degree of confidentiality.

Applicant/Owner's First Name ☐☐☐☐☐☐☐☐☐☐ MI ☐ Last Name ☐☐☐☐☐☐☐☐☐☐☐☐☐ Midland National Contract Number (if assigned) ☐☐☐☐☐☐☐☐☐☐

Joint Applicant/Owner's First Name ☐☐☐☐☐☐☐☐☐☐ MI ☐ Last Name ☐☐☐☐☐☐☐☐☐☐☐☐☐

A. FINANCIAL AND TAX STATUS

1. Annual household income: $ ☐☐☐☐☐☐☐☐☐☐☐ .00

2. Federal Income Tax Bracket (estimated): ☐ 0% ☐ 10% ☐ 15% ☐ 25% ☐ 28% ☐ 33% ☐ 35%

3. Net Worth: $ ☐☐☐☐☐☐☐☐☐☐☐ .00 (exclude primary residence)

4. Source of Funds for the purchase of this annuity (check all that apply): ☐ Stocks/Bonds/ Mutual Funds ☐ Pension ☐ Annuity ☐ Checking/Savings ☐ Life Insurance ☐ Bank CD ☐ Other ____________________

5. Did your agent review your net worth, financial and tax status, investment objectives, and financial objectives before recommending this annuity?.......... ☐ Yes ☐ No

6. After considering your net worth, source of funds, liquidity needs, and time horizon do you believe this deferred annuity contract is suitable for your financial situation and objectives?.......... ☐ Yes ☐ No

B. FINANCIAL OBJECTIVES

1. My financial objective(s) for purchasing this annuity (check all that apply): ☐ Tax Deferral ☐ Guarantees provided ☐ Long-term growth, followed by income ☐ Long-term growth, with a transfer of assets to beneficiary at death ☐ Immediate annuity (Complete form 11796Y instead). ☐ Other ____________________

2. Do you have sufficient funds available for monthly living expenses, medical expenses and emergencies other than the funds planned for this annuity or any other annuities already owned? .... ☐ Yes ☐ No

3. An annuity is a long-term contract with substantial penalties for early surrenders and/or withdrawals. Other than penalty-free withdrawals, do you currently anticipate taking any other withdrawals during the surrender charge period?.......... ☐ Yes ☐ No
   If Yes, please explain how and when: ____________________

4. Do you understand that if you take money out of this annuity, in excess of the penalty-free withdrawal, during the surrender charge period, that you will incur a surrender charge and interest adjustment (if applicable)? .... ☐ Yes ☐ No

5. Will a trust be named as the Owner or Beneficiary of this annuity contract? .... ☐ Yes ☐ No
   If "NO", skip to Section C. If "YES", answer question 6.

6. I understand that the purchase of this annuity contract is in no way required in conjunction with the establishment of a Trust and that any fees, costs and/or expenses associated with the establishment or maintenance of the Trust are independent of any premium paid for the purchase of this annuity. .... ☐ Yes ☐ No

C. REPLACEMENT

☐ Not applicable - not replacing or changing an existing life insurance or annuity contract to fund this purchase (skip to D).

1. What is the remaining surrender charge associated with the existing contract?
(Please attach an additional sheet if more than three contracts will be replaced.)

   a. ☐☐ % Company Name ____________________

   b. ☐☐ % Company Name ____________________

   c. ☐☐ % Company Name ____________________

2. Are you using a penalty free withdrawal from your existing contracts to purchase this annuity? .... ☐ Yes ☐ No

3. Are you required to annuitize (elect a series of scheduled payments) your existing contract in order for you or your beneficiary to receive the full accumulation value without surrender charges? .... ☐ Yes ☐ No

4. I agree that my agent has explained how the existing and new contracts compare concerning surrender charges, interest rates, company ratings and all other benefits and features. .... ☐ Yes ☐ No

5. Replacement Reason (required) - My reason(s) for choosing this replacement contract *(attach an additional sheet if necessary).*
   ☐ Company Rating of Midland National ☐ Interest Rates/Index Credit Potential ☐ Penalty-free Death Benefit
   ☐ Change in Financial Objective ☐ Enhanced Benefits ☐ Increased Liquidity ☐ Multiple Index Options
   ☐ Other - Please Explain ____________________

   ____

   ____

6. Is your current agent the same agent who recommended the purchase of the existing annuity or life insurance contract? .... ☐ Yes ☐ No

D. APPLICANT / OWNER SIGNATURE

By signing below, I certify that: 1) to the best of my knowledge and belief, the information provided to my agent, and shown above is true and complete; 2) the annuity meets my financial needs and objectives; and 3) this annuity is suitable for me.

Applicant/Owner Signature: ____________________ **Date:** ☐☐ / ☐☐ / ☐☐☐☐

Joint Applicant/Owner Signature: ____________________ **Date:** ☐☐ / ☐☐ / ☐☐☐☐

E. AGENT STATEMENT
- ACKNOWLEDGEMENT OF RESPONSIBILITY FOR SUITABILITY RECOMMENDATIONS

By signing below, I certify that:
1) I have completed a suitability and needs analysis review regarding the purchase of this annuity;
2) I have reasonable grounds for believing that the recommendation to purchase this annuity is suitable for the Applicant/Owner; and
3) I agree to maintain records of the information provided by the Applicant/Owner and any other information used as the basis for my recommendation. I agree to make such records available for review upon request by Midland National or by any regulatory body as required.

Agent Signature: ____________________

Agent Number: ☐☐☐☐☐☐☐☐☐☐ **Date:** ☐☐ / ☐☐ / ☐☐☐☐