

Financial Assurance Group
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CHAIRMAN'S
CORRESPONDENCE UNIT

SEC Headquarters
100 F St. NE
Washington, DC 20549

re: Proposed SEC Rule 151A

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OFFICE OF THE SECRETARY

Att: Mr. Cox

As a financial professional for over 26 years, I understand what thousands of other qualified We understand that Congress has substantial influence over the SEC. We firmly believe that our elected officials need to hear the reasons why proposed rule 151A should not be implemented. This is an effort by the SEC to change long standing rulings for annuities, created and sold for many years as fixed, guaranteed instruments for retirement planning, to a 'security' status putting them in the category of stocks, mutual funds, bonds, and other investments which have risk of loss, under the Securities Act of 1933. However, such rash thinking is actually contrary to the facts and would not only affect the livelihood of those who work with fixed indexed annuities (FIAs), but also create confusion for clients as well as further problems in the nations' economy.

- 1) By definition, a security is an investment instrument other than an insurance policy or fixed annuity. A security is offered by investment companies, corporations or the government which include notes, stocks, treasuries, bonds, profit sharing, oil, gas, and other instruments where there must be a risk to the investors.

By contrast, fixed indexed annuities, though reflecting changes in the S&P 500 or other market indexes, do not directly connect the owner to the stock market and have definite protections against loss. If the index goes up in any give year (or crediting period), some of the gains are credited to the annuity with certain maximums and participations rates. However, if the index goes down, the client has NO losses at all. Therefore they have NO market risk and are unlike other investments, so would not be a security.

- 2) Why do state insurance departments as well as the insurance companies prohibit FIAs to be referred to as 'investments' if they are investments? Because they are an insurance policy with guarantees and not an investment, they cannot be included as a security.
- 3) The SEC has already made several decisions on the status of FIAs over the last 15 years so what truthful, justifiable new reasons would there be to change them to a Security?
- 4) There are very few complaints about fixed indexed annuities, less than 1%. Yet, think of how many people were upset with their brokerage companies in 2000-2002 when we saw the biggest drop in the stock market in a 3 year period since the 1929 Depression. Yet, clients in a fixed indexed annuities didn't lose a penny during those years. Why hasn't the SEC emphasized that point.
- 5) Seniors are actually protected with a FIA since there is no risk to principal. The funds are guaranteed by the strength of the insurance company reserves and as you know, each state has an insurance company guarantee fund as well. To our knowledge, no

one has ever lost anything in a fixed annuity, while billions have been lost in mutual fund brokerage accounts. Even banks have had their failures, although backed by FDIC. The regulators should be much more concerned about what brokers do who sell mutual funds that are completely inappropriate for most seniors than about having them in a position of safety with an insurance contract.

- 6). Many fixed indexed annuities now guarantee an income for as long as the owner lives, should they chose to take an income. Can any security assure a lifetime income? No. Contrary to what some think, an indexed annuity goes directly to the beneficiary if the owner dies (not to the insurance company), and avoids Probate.
- 7.) Owners also like saving taxes on annuities, since they grow tax deferred, something that most other investments don't offer.
- 8). Apparently the reason why SEC Chairman Cox has taken this position is from the few complaints about agents from a small minority of policy owners who didn't understand their annuity. In most cases, their agents did a good job at explaining potential growth, guarantees, surrender charges, liquidity, income options, etc. In the few exceptions where some agents may not have done so, most states have already taken steps to correct the matter by requiring insurance companies to have more detailed compliance and suitability forms. Some states have required 8 hours of Continuing Education credit every two years on annuities which has really helped. The solution is simply to have all states require the same CE training on annuities. For some reason there are more suitability forms and questions for a 'safe' indexed annuity than is re-required for establishing a risky mutual fund which any senior can do on line. Isn't that an absurd paradox?

Therefore, because fixed indexed annuities cannot be justified as a Security, it is clear that such efforts to change their status after so many years, should be stopped. It would be impractical and unnecessary for thousands of agents to have to take a Securities test, obtain another license, become part of a Broker/Dealer (BD), have to get all their other insurance products and companies approved by the BD, which is nearly impossible, and in effect have to start a new business. The answer is NOT making fixed annuities a security, but rather, unifying all states to have proper education and CE credits as well as the insurance companies providing specific Suitability forms and training to their agents.

It is also evident that those who do work as Broker Dealers and their security agents are worried about the many people who are transferring funds from their risk filled stocks and mutual fund accounts to the more appropriate, protected indexed annuity contract. Since this is in the client's best interests, the broker must be thinking of how it affects their ongoing commissions.

We ask for your active and immediate support against this unjust action by contacting Chairman Cox for both an extension as well as a final decision that will leave fixed indexed annuities just as they are so that those who are insurance licensed can properly assist their clients to avoid risk in their retirement planning.

Sincerely,



Glenn A Nitti 0666205

MGA -Financial Assurance Group