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September 29, 2008

Senator Herb Kohl
310 W. Wisconsin Ave. Suite 950
Milwaukee, WI 53203

Dear Senator Kohl,

As a member of your "Wisconsin" constituency I am writing you to make you aware of a proposed SEC ruling that has the potential to have a tremendous impact on my profession and the economy in general. The SEC, in a surprise move to most, proposed a ruling to make a certain fixed annuity, called an indexed annuity, a federally regulated product that would fall under SEC supervision instead of being regulated where it currently is, by the individual state insurance departments.

This ruling, if adopted, will have a devastating impact on the "STATE YOU LIVE IN" economy, impacting many insurance companies, independent marketing organizations, insurance agents and most importantly, risk adverse consumers who need this product the most.

I would argue that the SEC has done a very poor job with the responsibilities they already have, and I don't think, given everything going on, that they have the staff or budget to take on a project of this magnitude. If they are understaffed, taking a $26 billion market under their supervision, and cutting out the state insurance commissioners that are already doing a good job regulating sales and market conduct, would only hurt consumers, not protect them like the SEC claims.

I thought it might be helpful for me to briefly highlight a few points that I think are important for you to understand.

- **Fixed annuities are and have always been a matter for state insurance regulation, not federal securities regulation.** States regulate all aspects of these products, including company solvency and investment constraints, required contractual provisions, required minimum guarantees of value, agent licensing and education, product disclosures, all forms of advertising and suitability of product for consumers. Fixed indexed annuities (FIAs) fall under the insurance exemption of the Securities Act of 1933, were explicitly considered in Rule 151(1986) and were determined to be solely insurance in the Addison v. Malone (xxxx) case. The SEC itself has twice refused to make a securities determination in the last 10 years.
- **The proposed rule radically departs from all prior SEC action relative to insurance**, creates a new test out of whole cloth and is a slippery slope to drawing other products into securities regulation such as traditional declared rate annuities, indexed universal life insurance and traditional UL and participating whole life.

- **The SEC would seem ill-equipped to add to its plate the transition of this product to securities regulation**, including hundreds of registered product filings and 10's of thousands of filings for registrations as a securities representative. It is occupied with this unwarranted expansion of its jurisdiction at a time when it would seem to have more pertinent and crucial issues which are under its jurisdiction.
- **We believe the SEC, given its poorly reasoned and constructed proposal, will lose a subsequent legal challenge**, but in the meantime will wreck havoc on a $26 billion industry, forcing unnecessary legal expenses, wasteful and expensive efforts to purchase broker-dealers, register agents and register products all of which will ultimately impact product availability to clients and raise costs.
- **151A has been proposed without any contact with the state regulators'** coordinating body, the National Association of Insurance Commissioners. How can such a regulatory power play be in the best interest of consumers when their current regulators have not been consulted? It seems the SEC has not even considered the difficulties and possible conflicts of dual regulation.
- **The SEC, FINRA and state securities administrators have not demonstrated that they can improve market conduct.** The primary motivation for 151A seems to have been concern about market conduct abuses by agents, mainly misrepresentation of the degree of linkage to equities and liquidity by non-disclosure of surrender charges. We know to the contrary that these are fully and prominently disclosed in the contract and collateral documents as regulated by the states. The vast majority of agents highlight these as required. The SEC has accepted anecdotal evidence of abuse over hard data. In fact, FINRA and NASAA have conceded they have no securities complaint statistics they can share to corroborate their assertions that they can or will improve the current .07% complaint ratio for FIAs.
- **The SEC's action would potentially restrict access to an increasingly popular product with the public.** It would assign the product to the Broker Dealer supervision world where it has often received a chilly reception among a sales force and management often dedicated to maximizing the sale of true securities, not insurance. The same is true of the FINRA and state securities administrators, generally if not uniformly. The value proposition of greater potential interest without compromising principal and minimum interest guarantees, with guaranteed payouts for life in a tax-deferred, industry guaranteed product is available nowhere else on the financial landscape.
- **The cost of 151A will surely be 10 times what the SEC has spuriously estimated and be borne ultimately by consumers and insurance agents.** It will approach a billion dollars, not to mention the soft costs of the transition period.
- Given all of the issues above, **the time period allowed by the SEC for comment, discussion and implementation of 151A is inadequate.** A 75

day comment period was given and not extended despite more than 2,000 comments on their website opposing the ruling, with many requesting extension. Commissioner Cox has vowed for whatever reason to push 151A through before the current administration departs. Only a 12 month period is allowed before all products for new sale must be registered, the SEC must develop the ground rules for approval, all agents must be registered representatives, all sales must go through a broker-dealer, all wholesalers (IMOs) must own or be associated with a broker-dealer to receive compensation, etc.

- **The "grandfathering" of prior FIA sales to insurance status is one indication that the purpose of Rule 151A is something other than consumer protection.** The SEC will exempt sales prior to the effective date from the new definition of optional annuity contract. If the product by nature is a security, subject to federal securities regulation, then why would prior issued contracts not be subject as well? In fact, the way Rule 151A is currently written and their test for status is drafted, any particular annuity may drift in and out of securities status during its lifetime. A more confusing, disruptive and wrongheaded approach is hard to imagine.

Also attached for your review are two letters, one from the NAIC and one letter from 18 of your fellow Congress members opposing this ruling.

I am asking you to petition Chairman Cox to suspend his efforts to commandeer indexed annuities for SEC regulation. In my humble opinion, he has yet to prove that he deserves more responsibilities or supervision. AIG is an excellent example of this. The state regulated insurance divisions of AIG are very profitable and solvent. The parent company, AIG, supervised by the SEC and a federally traded security, is basically bankrupt. I have attached a sample letter that I am requesting you send to Chairman Cox.

Thank you for your time and thank you for your leadership during these troubling times in America. Our country needs your efforts and leadership today more than ever before.

Sincerely,

Michael L. Fischer – Agent

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