November 16, 2008

The Securities and Exchange Commission
Nancy M. Morris, Secretary
100 F Street, NE
Washington, DC 20549-0609

Advantage Group Associates, Inc.
Sheryl J. Moore
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RE: File Number S7-14-08,
Proposed Rule 151A

Dear Gentlemen and Ladies,

My name is Sheryl J. Moore, and I am president and CEO of an independent market research firm that works exclusively with indexed life and indexed annuity products. You are undoubtedly familiar with my company's work, as you have referenced it in your 96-page proposal to regulate indexed annuities as securities. The primary purpose of my business is to educate people on indexed products- period. Certainly, I do provide product development, market research, and competitive intelligence services in order to maintain my profitability. However, I have specifically spent the past three and a half years working to combat misinformation on these products, most notably indexed annuities.

First, let me tell you about myself. I began my career in a home office setting, with no prior experience in the insurance industry, or knowledge of indexed products. As a young mother, I was very motivated to excel in my newly-found position at a company that offered both indexed life and annuities. I asked a lot of questions. I learned what an indexed annuity was, and why someone might have a need for it in their retirement plans. As I proceeded to climb the corporate ladder, I obtained a position providing market research to the product development area. This function provided me access to information on every product in the indexed annuity industry, as well as those in the fixed and variable markets. It was during this time that I made the decision that an indexed annuity was right for me. Why? I was not willing to risk my initial premium payment at the expense of potentially unlimited returns. However, I wanted an opportunity to receive greater excess interest crediting than what was available in traditional fixed products. In short, I was willing to sacrifice some of my downside protection, in order to have a shot at greater excess interest potential. My risk profile is that of a typical indexed annuity client.

I believe in indexed annuities and indexed life. My livelihood is not dependent on the products, as I could be doing what I do now for anyone providing fixed or variable products. However, I chose not to because I so strongly believe in the value proposition of indexed products. In fact, this dedication is what motivated me to start my own company working exclusively with indexed life and annuities. Anyone who has seen me speak in front of a group of insurance agents will attest to the fact that I get excited about these products. To the benefit of my clients, I eat, sleep, breathe, and dream indexed products. Today, I am the foremost authority on indexed life and annuity products, carriers, and the sales of both product lines. I hold ACS, AIRC, and AIAA designations, but I do not use them in the course of my business. I am a continuing education provider, a member of NAIFA, and I am also a licensed life and health insurance agent in the state of Iowa. I have never contracted with a single insurance carrier, and I do not endorse any company or financial product. I am an indexed advocate solely because of my beliefs about the product line.

I believe that the indexed annuity industry has come to a climax with the SECs proposal that indexed annuities (IAs) are securities. This has been largely brought about because of a consistent pattern of persons outside of the industry perpetuating misinformation on the products. For nearly a decade, I have scoured more than twelve insurance and financial services trade journals on a daily basis for indexed annuity-related media. The analysis of these articles is staggering- on a monthly basis as many as 24 negative articles on IAs are distributed with material misstatements about the products, as well as general misinformation. The impact of such media is damaging to the industry, as much of the general public takes an attitude that "it must be true if it is in print." Even more damaging is "investigative" television journalism that reveals only one side of the market to consumers. Do journalists want to write and give reports on the benefits of indexed annuities? Not often enough. Sensationalistic reporting often means higher ratings, and even journalists with the best of intentions usually have poor data sources on the product line- all of which has led to a snowball of bad information from the media on IAs.

With that being said, I'd like to provide some **facts** about indexed annuities and the market. As of the third quarter, 2008:

- There are exactly 59 carriers offering indexed annuities.

- Of those 59, one carrier also offers a registered indexed annuity and an additional carrier does not offer fixed indexed products, but does offer two registered IAs.

- These carriers collectively offer 337 indexed annuities today, three of which are registered products.

- Only six registered indexed annuities have been available for sale since July of 2005.

- Precisely 53.62% of indexed annuity sales were of products bearing the most prevalent surrender charge in the industry, 10 years; only 3.17% of sales went to two-tiered products.

- The shortest surrender charge available on an indexed annuity is one year (available on one product); the longest surrender charge available is 16 years (available on two products).

- The average issue age of an indexed annuity client is 62.
- Indexed annuity commissions received by the agent averaged 7.98% of premium for the quarter.
- The smallest street level commission available on an IA is 0.70% (available on one product); the largest street level commission available is 13% (also available on a single product).
- IA sales for the third quarter of 2008 were at $6,781,913,171- a 5% increase over the previous period in 2007.
- Nearly 88% of the sales for the quarter were made by independent insurance agents.

When I had the opportunity to read the 96-page document which outlines a proposal for redefining indexed annuities, and thus subjecting them to securities regulation, I was angry. I saw nearly 100 items in the document that I took issue with, ranging from material misstatements to misleading information and miscalculations. It then occurred to me that individuals at the SEC may merely be uninformed on indexed annuities, the market, and their place in the retirement product spectrum. Had you read "The Basics" section of my website at www.annuityspecs.com, you would have a greater understanding of the products. However, it appears that you either skipped over that public portion of my site, or chose to ignore it in your quest for sources to support your cause. If you had the time to use my website as a source for the carriers in this market, it would seem logical that you came across this explanatory "indexed annuities 101" type section as well. Assuming that the SEC staff is merely uninformed, I am taking the opportunity to provide you with answers, clarifications, and corrections. In a perfect world, I would offer a continuing education course on indexed annuities to your staff. I am afraid, however, that it would fall upon deaf ears that already have a steady course regarding the securities status of indexed annuities.

Differentiating Indexed Annuities from Securities

First and foremost, an indexed annuity is just a fixed annuity with another way of crediting interest. PERIOD. In all aspects but the minimum guaranteed interest and the potential excess interest crediting, fixed and indexed annuities are the same. Many get so overwhelmed in believing the perpetuated myth that these products are complex that they fail to realize this basic premise. Indexed annuities fit directly in the center of the annuity risk spectrum, between fixed and variable annuities. They provide a smaller minimum guarantee than fixed annuities, but the opportunity for greater credited interest. In turn, IAs provide a minimum guarantee that is not available on variable annuities (except via a fixed strategy or rider with an explicit account value charge), yet limit the potential interest crediting unlike a VA. Therefore, the typical indexed annuity client is an individual who is not willing to risk the principal protection on their annuity for the reward of unlimited interest crediting potential. However, they desire to earn more than what is available via traditional fixed annuity rates, by 1% or more. These clients do not purchase IAs for the same reason an individual would purchase securities products- as this is an apples-to-oranges comparison. Indexed annuities are a safe money place, and products such as mutual funds and variable annuities are risk money places, where the client's principal is not safe from market fluctuations. The risks and rewards of securities products and indexed annuities are not aligned, as the principal protection and minimum guarantees are inherent to indexed annuities. Furthermore, upside potential interest crediting is limited to offset the cost of the guarantees.

Minimum Guarantees on Indexed Annuities

Every single indexed annuity in the market offers a 0% floor in the event of a decline in the index- including those products utilizing the monthly point-to-point method which does use negative adjustments in the index for the crediting calculation. Indexed annuities clients cannot lose their principal due to any market fluctuations. In fact, the indexed annuity client is guaranteed their principal plus interest as a hedge against declines in the market. Many discuss the fact that the dividends paid on an index are excluded from the crediting calculations in the indexed annuity market as a drawback. However, the annual reset feature and 0% floor on the products more than make up for any exclusion of dividends in these calculations. The state insurance departments regulate the guaranteed minimum values on all fixed annuities through Standard Non-Forfeiture Laws (SNFL). Initially, the Guaranteed Minimum Interest Rate (GMIR) used in determining the minimum values on annuities was fixed at a rate of 3%. However, falling interest rates caused many carriers to pull their products from the market, or even exit the market altogether. For this reason, the NAIC assisted in creating a model for SNFL, which could adjust to changes in market interest rates. Today, the majority of indexed annuities available offer a Guaranteed Minimum Surrender Value (GMSV) based on this model. Today's typical GMSV credits 87.5% of client's premium with a rate of interest between 1% and 3%. The 5-year Constant Maturity Treasury (CMT) rate is the benchmark used to determine whether the GMIR is closer to 1%, or 3%. In addition, there is a specific formula that it used to determine the GMIR in relation to the 5-year CMT (this ensures that insurance carriers do not change the rate to their own advantage). Of the carriers offering GMSVs at this "floating rate" based on 87.5% of premium, only two have ever dropped their rate as low as 1% and some have maintained a rate as high as 3%. Today, these rates range between 1.25% and 3%, with an average GMIR of 2.28%. So, an IA client receives a return of premium in year six of the contract assuming an 87.5% @ 2.28% MGSV. It would be disingenuous to assume that indexed annuities in general provide MGSVs of 87.5% @ 1% for this reason, as you indicate in your 96-page proposal. Even a client with an MGSV of 87.5% @ 1% would receive a Minimum Guaranteed Surrender Value of $88,375 in the event of a first-year surrender on $100,000 premium. The benefit of a 0% floor and Minimum Guaranteed Surrender Values on these products is what differentiates them dramatically from the products discussed in the United Benefit Life and VALIC cases. The only risk to the indexed annuity client's principal is in the event that they surrender more than their penalty-free amount, unlike variable annuities' risks.

Who Bears the Risk on an Indexed Annuity?

It is important to understand the relationship between the minimum guarantees in relation to the current caps, participation rates and spreads in an indexed annuity contract. For example, an insurance carrier may use 97¢ to invest in bonds to cover the minimum guarantee of an IA, and the other 3¢ is used to purchase options for the index-linked interest on the contract. The risk of investing directly in the stock market is transferred away from the consumer with the product, as the insurance company's option seller assumes any risk of market fluctuations. Furthermore, the insurance company assumes any risk of a decline in the market because they are continually required to honor the minimum guarantee on the contract, regardless if the market performs poorly and no indexed gains are credited. The insurance carrier bears the “investment risk-taking” as well as providing a “true underwriting of risks” with the contract. Over a ten-year term, they typical indexed annuity would return 117.6% to the client if there were no indexed gains credited. So, the only risk the consumer takes on is a question of what level of excess interest will be credited to their contract, above and beyond the MGSV. The transference of risk and minimum guarantees are part of what make an indexed annuity a fixed insurance product regardless if the external index used for calculating interest is the S&P 500® or the Gold Commodity. One could offer an indexed annuity with indexed interest based on the price of rice in China, and it would still be a fixed product if the insurance company bore the risk of the product and it was regulated by a state insurance department. However, producers presenting the products as fixed insurance contracts, rather than investments, is the last identifying trait which classifies the products as insurance rather than securities. All insurance carriers offering these products promote them as fixed insurance safe money alternatives, not investments. Mistakes were made in the marketing of IAs when they were first introduced in 1995, and some marketers may have referred to them as “variable annuities with training wheels.” This is not the case today, as insurance carriers and marketing organizations alike have provided diligent training on the fixed insurance status of these products for a decade, focusing on how they should not be compared to securities or an index itself.

Credited Interest on Indexed Annuities

The rate-setting on indexed annuities after the first policy year is not unlike that of a traditional fixed annuity. The insurance carrier has the ability to change renewal rates on each policy anniversary (or less frequently), subject to minimums which are explicitly expressed in the annuity contract. Furthermore, no indexed annuity modifies the credited rates more frequently than once per year. There are no indexed annuities which credit more frequently than annually, and only 11.4% of products available today offer an indexing method that credits potential interest less frequently than an annual basis. However, all indexed annuities disclose how potential indexed gains are calculated in advance of the crediting term, whether it be an annual term or ten years.

Indexed Annuity Liquidity

As far as charges are concerned, indexed annuities do not have sales charges or up-front expenses to the client. Surrender charges on IAs are often viewed as a negative issue, but many lose sight of the fact that consumers with longer surrender charges usually benefit from an up-front premium bonus or more favorable participation rates, caps, and asset fees. Surrender charges are only assessed in the event that a client withdrawals more than their penalty-free amount, as provided in the annuity contract. In fact, 100% of indexed annuities today offer a penalty-free withdrawal provision. Of the 337 products available, only six offer 5% annual penalty-free withdrawals; the rest all provide at least 10% withdrawals each year. Sales for the six products offering a 5% penalty-free option only accounted for 0.20% of third quarter, 2008 sales. There are even IAs on the market offering penalty-free withdrawals of 15% or 20% annually. Despite the widely publicized misinformation on indexed annuity surrender charges, the average surrender charge period is merely ten years. The average first-year surrender charge scale is 10.99%, and for older annuitants the average is 10.68%. When reviewing liquidity options on indexed annuities, you must also consider that 89.71% of these products allow for a waiver of surrender charges for one or more qualifying events. So, in the event of death, disability, nursing home confinement, required minimum distributions, terminal illness, or unemployment- almost 90% of IAs provide a waiver of surrender charges from the account value. It is understandable that the SEC would be concerned about exorbitant surrender charges and the possibility of consumers having reduced or eliminated indexed gains in the event of surrender charge application. However, not every IA is a two-tiered product. In fact, there are only six two-tiered annuities available today, and sales of these products accounted for a mere 3.13% of third quarter, 2008 sales. In addition, only 11.5% of products on the market provide an indexed crediting term that is longer than one year, where the client may be subject to losing participation in the index if they withdraw funds early. However, only five IAs do not offer an alternative crediting option that allows for annual index crediting, if this is a concern.

Indexed Annuity Complaints

Much of the concern about indexed annuity sales has centered around "high complaints." In fact, in watching Chairman Christopher Cox's video at the time 151A was about to be released- these complaints seemed a primary motivating factor for the proposed rule. SEC contends that the growth of IAs has "unfortunately been accompanied by growth in complaints of 'abusive sales practices'." I ask you- isn't this something that happens with all immature product lines? Did variable annuities not experience a similar occurrence at the same stage in the product life cycle? Based on research that my firm conducted on the NAIC Closed Complaints Data for 2007, variable annuities received six more complaints than indexed annuities did for the year. A total of 235 complaints were received for all 58 carriers offering indexed annuities for that year. That averages out to 4.05 complaints per carrier for 2007. Certainly any and all complaints are to be taken seriously, as we all strive for a perfect sales environment. However, this level of complaints hardly seems the out-of-control environment that securities regulators make the indexed annuity market out to be.

Indexed Annuity Regulation

Indexed annuities meet the Safeharbor Rule 151 requirements. It is amazing that the SEC would be proposing that a general account product with a guarantee of principal is a security. Moving to reclassify the products as "non-annuities" appears to be a systematic attack to the product line. Perhaps there have been market conduct issues with the products, but these are promptly addressed by insurance carriers and ultimately the state insurance departments. Insurance agents offering these products are not only obligated to provide suitable recommendations to their clients, but must follow an annuity suitability model that has been adopted in 33 states (coincidentally all indexed annuity carriers have implemented this model in all states). The NAIC's Annuity Disclosure Model Regulation has been adopted in 22 states, and an Annuity Disclosure Pilot Project sponsored by the ACLI and the Iowa Insurance Division is being used by 17 annuity carriers. The state of Iowa is very educated on the matter of indexed annuities, as 56.07% of sales of the line are made by Iowa-domiciled carriers. This insurance division in particular has proactively sought-out information to ensure best practices, suitability, and sound market conduct in the sales of indexed annuities. SEC intends to protect consumers with federal securities laws "…including full and fair disclosure regarding the terms of the investment." However, I question how you can assure this when the majority of investors never read their prospectus? According to AnnuityIQ, the average prospectus has over 200 pages. Yet, a review of the top 10 indexed annuities for 3Q2008 indicates that the average indexed annuity contract is only 26.7 pages and still discloses all of the terms of the contract. Furthermore, if any fixed indexed annuity purchaser has a complaint with a product today, all they need do to resolve it is submit a complaint to their local insurance commissioner. They are assured a response to their complaint within ten days at no cost. The complaint resolution process for securities is far more cumbersome, lengthy and costly, and usually involves the client obtaining a lawyer for resolution. This does not seem in the best interest of indexed annuity consumers. The SEC's sales practice protections may be different, but that does not necessarily make them better.

Responding to the SEC

My question to the SEC is this- if part of your test in determining whether, or not, a product is a security hinges on whether "the amounts payable by the insurer under the contract are more likely than not to exceed the amounts guaranteed under the contract," does this allude to the fact that potentially products such as CDs, fixed annuities, universal life, indexed universal life, and whole life may be reclassified as securities in the future? The SEC also contends that "…if amounts payable under a contract are partly fixed in amount and partly dependent on the performance of a security or securities, the contract would need to be analyzed under the rule." Technically, wouldn't this mean that fixed annuities with a Consumers Price Index (CPI) adjustment need to be analyzed? What about other fixed products that are guaranteed by bonds, but have a similar benchmark for an inflationary rider? You contend in your 96-page document that during free lunch seminar sweeps that the products at these seminars "commonly included indexed annuities." However, you don't disclose that the Protecting Senior Investors report said "Examiners found that the most commonly discussed products at the sales seminar were variable annuities, real estate investment trusts, equity indexed annuities, mutual funds, private placements of speculative securities (such as oil and gas interest) and reverse mortgages." However, securities regulators would make it out to be that indexed annuities were the primary product discussed.

Regarding your analyses of the implementation of your proposed rule 151A, I believe 0you make many dangerous assumptions and misleading allegations. First, you assume 60,000 hours of in-house company personnel time to comply with form S-1 collections. This is about 127 days or four months, which is far too conservative as current policy form drafting and filing procedures require at least three months. In addition, this is a new procedure which 61% of the carriers in this market have no experience in. Furthermore, your cost of $1.2 million for services of outside professionals is greater than the amount of production that 12% of the IA market does in a quarter! Certainly this cost is conservative, but even at that, many insurance companies will not be able to justify the expense. SEC further assumes that 75% of S-1 preparation burdens are to be carried by outside professionals at an average cost of $400 per hour. Today, the typical filing analyst performing this same function receives $19 - $25 per hour in wages. The costs of the S-1 filings will therefore raise the costs of filing products exponentially. These increased costs will be passed on to consumers by more costly/less appealing products. How can this be in the best interests of the consumer? You indicate that this proposed rule has many benefits including enhanced disclosure, sales practice protections, enhanced competition and greater regulatory certainty. Of these, only "greater regulatory certainty" seems to be a true benefit. Prospectuses may have tremendous disclosure, but consumers are too intimidated by their girth to even read them. State insurance departments currently ensure sales practice protections quite effectively.

However, the benefit that you most dangerously tout is “enhanced competition.” This rule will not enhance competition, but put a damper on it. The number of carriers offering these products will likely reduce by as much as 42% or more should your rule be ultimately adopted, and sales will diminish to a fraction of current levels. Many carriers may be forced to exit the market merely because they cannot onto B/D’s “approved lists.” These approved lists have already dramatically reduced competition in the indexed annuity market, as B/Ds have embraced the 10/10 Rule as a prerequisite for making their approved lists. Only 41% of indexed annuities on the market meet the demands of 10/10, thus largely impacting products and carriers in the market. To compound the issue, carriers who’ve been “on the fence” about offering indexed annuities will not proceed because they’ve been waiting for an SEC determination that indexed annuities are ***fixed products***. In addition, consumers would have to open brokerage accounts to purchase indexed annuities under your plan, which would eliminate many of the prospective purchasers to indexed products. Not to be overlooked, agents selling the products would need to become registered representatives and affiliate with a broker dealer in order to continue offering indexed annuities. The implications of this are intolerable to much of the 45% of unregistered agents selling indexed products today. Many of them will simply stop selling indexed annuities because they have no desire to become registered representatives. The indexed annuity distribution works through marketing organizations by the vast majority. What will happen to these intermediaries in the event that your rule is proposed? They will be largely left struggling to survive off of the marketing of fixed annuities, thus crippling the independent agent distribution. You ask for feedback on the number of IMOs in this industry, and unfortunately that is a number that no one can provide. Personally, I work closely with 60 marketing organizations, many of which would not be able to maintain profitability if 151A were adopted, and this only represents a fraction of the IMOs in the industry. The SEC’s assumption that B/Ds would be more willing to selling indexed annuities if they were registered is grossly inaccurate. Today, B/Ds consider indexed annuity oversight as burdensome. Since FINRA suggested that B/Ds oversee the sales of indexed annuities sold through their registered reps, many of these firms have viewed the oversight negatively. In addition, there are still firms today that do not permit sales of indexed annuities through their registered representatives. Overall, many B/Ds seem very uneducated about the products in general. Not to be overlooked, the repercussions of making these fixed products into securities translates into a future bastardization of the product line. How long do you think it will take for companies with REGISTERED indexed annuities to sacrifice the downside guarantees for greater upside crediting potential. With prevailing interest rates diving, I suggest that it will not be long. If the SEC’s estimated aggregate annual cost for implementation of this rule is correct at $82.5 milion, it has serious implications for the 59 carriers in this market. Only 21 carriers offering indexed annuities sold more than $82.5 million in 2007. How can companies justify this expense, in light of sales levels? SEC recommends that the loss of revenue for these carriers may be offset by other products. However, you lose sight of the fact that consumers’ risk profiles are different. You cannot put a moderately risk-averse client into a variable annuity with good conscious.

You go on to mention the benefits of using the EDGAR system to provide public access to all of the provisions on all of the contracts. As a competitive intelligence analyst that has been reviewing indexed annuity policy filings at the state insurance department for nearly a decade, I can assure you that this action would only reduce competition in result in numerous cookie-cutter type products. Today, several companies in this market use state insurance division policy filing access as a method of “one-upping” competitors’ unreleased products. This has resulted in numerous duplicative products being offered by multiple carriers. Do you intend to magnify this issue, as it most certainly would.

I thank you for the opportunity to comment on your proposed rule. However, I urge you- please do not adopt the proposed Rule 151A in any form. This would be a “major rule” under your guidelines, but it would be an anticompetitive, duplication of regulatory efforts, and a burden to seniors who need the safety of guarantees and greater potential for interest crediting.

Sincerely,

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