

November 17, 2008

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

**Re: Comment on Proposed Rule 151A
Release Number 33-8976 (File Number S7-14-08)**

Dear Ms. Harmon:

A minority of the comment letters in response to the proposed Rule 151A support the Commission's attempt to require the registration of equity indexed annuities. This letter addresses some of the arguments that have been made by those commentators.

Argument #1: Equity index annuities should not be able to rely on Section 3(a)(8)

Some commentators have asserted that equity indexed annuities should not be able to rely on Section 3(a)(8). They attempt to justify this position by arguing that the cumulative impact of the investment risk borne by the purchaser and the nature of promotional and marketing activities means that equity indexed annuities do not satisfy the registration exclusion provided by Section 3(a)(8). This argument is puzzling since it means that the proposed Rule 151A is unnecessary. If this argument were valid, then the SEC could have already prosecuted carriers issuing equity indexed annuities that do not satisfy Section 3(a)(8). But the SEC has not brought an action against any equity indexed annuity carrier. This clearly supports the position that equity indexed annuities can rely on Section 3(a)(8).

Argument #2: Equity index annuity interest credits are not known until the end of the year

The interest rate credited to the guaranteed minimum value of an equity indexed annuity is set at issue and does not change. This means that there is no uncertainty regarding guaranteed interest credits on an equity indexed annuity.

Excess interest credits made to an equity indexed annuity account value are dependent on an external index. But in the Rule 151 Adopting Release, the SEC permitted the use of index features to determine the excess interest rate. This means that the SEC is willing to accept some uncertainty with respect to excess interest credits.

Argument #3: Equity indexed annuities don't satisfy the current Rule 151

Many equity indexed annuities satisfy the literal wording of Rule 151. It is true that most equity indexed annuities do not meet the wording in the adopting release for Rule 151. But this doesn't mean that equity indexed annuities should be registered. As stated above, if equity indexed annuities satisfy Rule 3(a)(8), registration is not required.

Argument #4: Equity indexed annuities add investment risk based on the performance of an external equity index

First, it is not clear that people saving for retirement would consider the possibility of a higher interest credit as a risk. As today's markets illustrate, savers do consider the loss of principal as a risk. They are extremely concerned about effective principal guarantees, especially after the declines in equity and bond markets, as well as the failures of issuers of principal protected notes.

Secondly, it is true that equity indexed annuities credit excess interest credits based on the performance of an external index. This compares to traditional declared rate annuities that set excess interest credits based on the performance of the issuing company's investment department performance. It is puzzling that setting excess interest credits based on an independent external index would require registration, while setting excess interest credits based on the performance of an insurance company's investment department would not.

Argument #5: Equity indexed annuities typically do not identify guarantees prospectively to satisfy the Section 3(a)(8) investment risk factor

An equity indexed annuity that does not set a guarantee on the issue date that satisfies the Standard Nonforfeiture Law for the life of the policy could not be sold under state law. Since the equity indexed annuities in the marketplace have been approved for sale under state law, it is clear that equity indexed annuities DO provide guarantees prospectively.

Argument #6: Equity indexed annuities are marketed primarily as investments, not insurance products

If the SEC can show that an equity indexed annuity is being marketed as an investment, then it currently has the authority to force its registration under existing law. Proposed Rule 151A is unnecessary.

Argument #7: Proposed Rule 151A is too broad because it could apply to traditional non-equity indexed annuity contracts

The commentators taking this position do not sell equity indexed annuities, but are concerned that their non-equity indexed annuity products might require registration under the proposed Rule 151A. Invariably these commentators want to draw a line, with equity indexed annuities requiring registration on one side, and their non-equity indexed annuity products on the other. One clear loser in this line-drawing exercise would be the consumer who would have reduced retirement savings choices.

Argument #8: Equity indexed annuities are often used to perpetrate fraud and abuse

Many commentators arguing in favor of Rule 151A state that equity indexed annuities are being sold fraudulently.

First, if this were true, there are already statutes prohibiting fraud.

Secondly, for the first 9 months of 2008, the NAIC reported that there were 156 Closed Confirmed Consumer Complaints for indexed annuities compared to 1,452 for other annuities. Granted that this is 156 more cases than any of us would like to see; but, it's a far cry from the implication by some commentators that indexed annuities are the major source of misrepresentation and fraud in the annuity business. Lastly, from 2005 to 2007 there were roughly 1,700 NASD cases settled and only one involved an index annuity.

Argument #9: A combination of treasuries and index funds almost always outperforms an equity indexed annuity

Some commentators have tried to use financial modeling to discredit equity indexed annuities. These individuals often use models with inherent assumptions that are unreasonable.

For example, an argument was made that investing in a combination of treasuries and index funds will almost always outperform an equity indexed annuity. The "proof" includes the assumption that on average, the S&P 500 will grow from 1114.80 on September 29, 2004 to 4233.45 on September 29, 2018, an average annual growth rate of 10%. This return would be earned by the investment in the index fund portion of the investment. However, on October 29, 2008, we know that the S&P 500 closed at 930.09. This means the index will now have to climb, on average, 16½% every year for almost ten years in a row. The assertion lacks credibility on its face.

Another key assumption, market volatility, also has a significant impact on the expected returns of equity index annuities and on index funds. Unfortunately this assumption was not disclosed in the commentators' analysis.

Argument #10: Equity indexed annuities have high surrender charges

There are many retirement savings products that have significant surrender charges including CDs and declared rate annuities. Applying this argument evenly suggests that CDs and declared rate annuities should also be considered securities.

Based on the discussion above, it seems clear that proposed Rule 151A:

- a) is not necessary in the very small set of cases where SEC enforcement action is required and
- b) would severely restrict the choices available to Americans saving for retirement at a time when safety of principal is a key concern.

We therefore ask that the SEC withdraw this proposed Rule at the earliest opportunity.

Sincerely,



Derek Ferguson, FSA, FCIA, MAAA
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