

November 17, 2008

Re: File No. S7-14-08

My name is Danny Holder, and I oppose the SEC's proposed Rule 151A to regulate Fixed Index Annuities for the reasons listed in this email. I am a state registered Investment Advisor Representative.

First, I would like to relate an example of how one of my clients benefitted from the availability of Fixed Index Annuities, in their present form. The clients are a married couple, 67, and 65 years old – both semi-retired. Total combined investible assets when we met in May, 2008 were approximately \$417,000. Of those assets, 96% were judged to be “at-risk” assets, including mutual funds, and variable annuities; and 4% were considered to be safe, guaranteed, or insured assets such as money market and savings accounts. The clients maintained approximately \$12,000 in emergency funds. Each client owned a variable annuity – the husband described his variable annuity as being worth only slightly more than the amount he invested seven years prior; the wife described her annuity as being worth **less** than the amount she invested eight years prior. No withdrawals had been taken since the VA's were issued. Both husband and wife felt like they had too much exposure to the market, and wanted to move assets to a safer place. Their decision was to move both variable annuities to Fixed Index Annuities, and did so with no surrender charges on the VA's. The client's combined asset allocation after moving to FIA's was approximately 47% at-risk, and 53% safe, guaranteed, or insured. The S&P has declined approximately 38% from the time they decided to move to safe assets to today – meaning that if their VA's declined by a like amount, their VA's would be worth far less than they were when we first met. As a result, because the new Fixed Index Annuities owned by the client do not decrease in value when the market declines, the client has not lost any money in the FIA's. This client was and is well served by the present structure and regulation of Fixed Index Annuities.

Please carefully consider the following points regarding the regulation of Fixed Indexed Annuities.

- As stated on the SEC website, “The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”
 - SEC regulation of Fixed Indexed Annuities (FIA's) does not fit within the SEC's mission for the following reasons:
 - Owners of FIA's are not investors. The owner makes a contractual agreement with an insurance company – not an investment. The guarantee from the insurance company guarantees the return of principal and all credited interest, except in the event of early surrender, which is fully explained in the Policy **and** the Disclosure Agreement as required by state insurance departments.
 - Regulation of FIA's will not help the SEC to maintain fair, orderly, or efficient markets.

- Regulation of FIA's will not help the SEC to facilitate capital formation.
- Paragraph 5 of the "What We Do" section of the SEC website states: "But unlike the banking world, where deposits are guaranteed by the federal government, stocks, bonds and other securities can lose value. There are no guarantees. That's why investing is not a spectator sport. By far the best way for investors to protect the money they put into the securities markets is to do research and ask questions."
 - SEC regulation of FIA's does not fit within the SEC's mission for the following reasons:
 - FIA's **do** offer guarantees, which are backed by insurance companies that are already regulated by state regulators. The company guarantees in many states, if not all states are backed by State Life and Health Associations – generally up to \$100,000. Therefore, the guarantee goes beyond the ability of the insurance company to fulfill the contract.
 - FIA's are unlike securities such as stocks and bonds as they cannot lose value except in the event early surrender, which is explained in the Policy and the Disclosure Agreement as required by state insurance departments.
 - FIA contract owners are not putting their money into the securities market as stated in Bullet #2 above. They are placing money on deposit with an insurance company that in return contractually guarantees the return of principal and credited interest.
- Paragraph 8 of the "What We Do" section of the SEC website states: "The SEC oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds. Here the SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud."
 - As FIA's are not securities in the sense that a consumer cannot derive a loss from their deposit, except through an early surrender, the SEC should not include insurance companies as a regulated entity within the "securities world" due to their offering of FIA's.
 - The disclosures, fair dealing, and protecting against fraud as relating to FIA's are already regulated by insurance companies and state insurance departments.
- Fixed Indexed Annuities (FIA's), their sales practices, and consumer suitability requirements are already effectively regulated by state insurance departments.
- **Regulation of FIA's by the SEC will certainly cause unnecessary costs to be added to the creation and administration of FIA's – costs such as filing fees, regulation, and supervision. Consumers will bear the burden for these**

- additional costs**, with no additional value added for the consumer. The competitive benefit of FIA's will be decreased or lost by the consumer if the SEC begins to regulate FIA's. These actions will be counter to the SEC's mission to protect investors – it will cost the investor more, and not provide added benefit or protection.
- Increased regulation will increase the cost to issue and administer FIA's, and may potentially make them unattractive to the public from a competitive standpoint as a safe money alternative.
 - Should the SEC decide to regulate FIA's, the SEC will quite likely remove FIA's as an alternative for consumers.
 - The SEC should allow consumers to make the decision to compare products, and not make the decision for them.
 - Professionals in the equities business want the SEC to regulate FIA's, because they know regulation will increase the cost to issue and administer FIA's – such action will decrease the competition FIA's present to their business.
 - Such action will be good for the equities business since they will have less competition, and will be good for the SEC.
 - Such action will be bad for consumers and for those involved with FIA issuance and marketing.
 - The public is placing money in FIA's because they desire:
 - the benefit of a contractual guarantee against loss;
 - the potential to earn more than other safe money alternatives;
 - and a contractual minimum interest guarantee.
 - The Commission cites its concern over improper sales practices as the primary basis for proposing Rule 151A however, the proposal is not supported by any empirical evidence that supports the Commission's claim that widespread abuses in selling the product exist. The Commission provides no study, research findings or statistical information to demonstrate or suggest that the abuses are endemic or pervasive. A vast majority of states have adopted the NAIC Suitability Model. The NAIC reports that only .1% of all complaints filed with state insurance departments relate to fixed indexed annuities.
 - I know that I am one of many who advocate FIA's - who take their advisory responsibility very seriously and certainly do not think that the idea of additional regulation of FIA's will benefit the public.