



STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

P.O. Box 9033 • Olympia, Washington 98507-9033  
Telephone (360) 902-8760 • TDD (360) 664-8126 • FAX (360) 902-0524 • Web Site: [www.dfi.wa.gov/sd](http://www.dfi.wa.gov/sd)

November 17, 2008

VIA E-MAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549-1090

**Subject: Indexed Annuities and Certain Other Insurance Contracts, Release Nos. 33-8976, 34-58769, File No. S7-14-08**

Dear Ms. Harmon:

On behalf of the Securities Division of the Washington State Department of Financial Institutions, I am writing to express strong support for the efforts of the Securities and Exchange Commission to confirm the status of indexed annuities as securities not exempt from regulation under federal securities laws.

An indexed annuity squarely falls within the definition of “security” as an investment contract. *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). Investors purchase indexed annuities with the expectation of returns to be paid by the companies offering these products for sale. Investors depend on the successful managerial efforts of those companies to realize any returns. In fact, the Supreme Court long ago recognized that the term “security” as defined in the Securities Act of 1933 is broad enough to include any “annuity contract.” *SEC v. Variable Annuity Life Insurance Company of America, Inc.*, 359 U.S. 65, 68 (1959).

Regulating indexed annuities as securities has sound legal and economic justification. Indexed annuities impose significant risks upon investors, including fluctuations in gains attributable to the applicable securities index and potential loss of principal. In addition, issuers and agents routinely market indexed annuities as investments, not insurance products. For these reasons, the indexed annuity is not the type of annuity that Congress intended to exempt under the federal securities laws.

We support the efforts of the Commission to clarify the status of indexed annuities as securities not exempt from regulation under federal securities laws because it is apparent that clarification

Florence E. Harmon

November 17, 2008

Page 2 of 2

is needed and will set a clear national standard of regulatory oversight for these products. The complementary regulation of these products by insurance and securities regulatory authorities will serve to better protect the investing public. The main focus of insurance regulation is necessarily on the solvency of the companies selling insurance products. Because the main focus of securities regulation is on the protection of investors, securities regulation offers an important system of product disclosure, licensing standards, investor suitability, and protection from fraud. Vitally important to investor protection is the ability of investors to seek recovery for violations of the securities laws, particularly in those states with insurance laws that do not provide investors a private remedy for wrongdoing.

The State of Washington has enjoyed the benefits of complementary insurance and securities regulation of traditional variable annuities since 1969. *See* WASH. REV. CODE § 18.18A.060 (2008). The staff of our Securities Division work closely with the staff of our Office of Insurance Commissioner to carrying out this regulation. We believe the synergy created by this system of complementary regulation is beneficial to the residents of our state. Investors who buy indexed annuities should be afforded the same benefits on a nationwide basis.

We again thank you for this opportunity to share our comments on the proposed rule. If you have any questions regarding our comments, you may contact me by e-mail at [mstevenson@dfi.wa.gov](mailto:mstevenson@dfi.wa.gov) or by telephone at (360) 902-8760 or Bill Beatty by e-mail at [bbeatty@dfi.wa.gov](mailto:bbeatty@dfi.wa.gov) or by telephone at (360) 902-8723.

Sincerely,

A handwritten signature in black ink that reads "Michael E. Stevenson". The signature is written in a cursive, slightly slanted style.

Michael E. Stevenson  
Securities Administrator