

November 25, 2008

Honorable Florence E. Harmon  
Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: File No: S7-14-08, Resolution Opposing Release Nos. 33-8933 & 34-58022: Proposed Rule 151A

Dear Ms. Harmon:

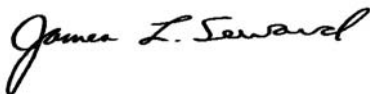
On behalf of the National Conference of Insurance Legislators (NCOIL), I am forwarding you a *Resolution in Support of State Insurance Commissioner Authority over Fixed Indexed Annuity Products*, which was adopted unanimously by the NCOIL Executive Committee on November 23, 2008.

The resolution opposes proposed U.S. Securities and Exchange Commission (SEC) Rule 151A, and respectfully requests its repeal. It also reaffirms long-standing NCOIL support for state insurance commissioner authority over the sale and marketing of annuity products to consumers, while encouraging increased communication among insurance departments and state and federal securities regulators over areas of mutual concern.

NCOIL is an organization of state legislators whose primary area of interest is insurance legislation and regulation. Many legislators active in NCOIL either chair or are members of the committees responsible for insurance legislation in their respective state houses across the country. More information is available at [www.ncoil.org](http://www.ncoil.org).

Please do not hesitate to contact Jordan Estey in the NCOIL National Office at 518-687-0178 or at [jestey@ncoil.org](mailto:jestey@ncoil.org) should you have any questions.

Sincerely,



Senator James Seward  
NCOIL President  
New York State Senate

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## **Resolution in Support of State Insurance Commissioner Authority Over Fixed Indexed Annuity Products**

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*Adopted by the NCOIL Executive Committee on November 23, 2008, and by the NCOIL Life Insurance & Financial Planning Committee on November 20, 2008.*

**Sponsored by Sen. Joseph Crisco (CT), Rep. Robert Damron (KY), Rep. George Keiser (ND), Sen. William Larkin, Jr. (NY), Sen. Carroll Leavell (NM), Sen. James Seward (NY), and Rep. Brian Kennedy (RI)**

WHEREAS, it is well established that states have primary jurisdiction and responsibility for regulating life insurance and annuity products offered to consumers in their respective jurisdictions; and

WHEREAS, fixed indexed annuities are generally subject to all state insurance laws and regulations applicable to traditional annuity products, including state nonforfeiture laws that provide for minimum guaranteed values and ensure that consumers earn a minimum return, regardless of market performance; and

WHEREAS, the investment risks associated with fixed indexed annuities are borne by the insurance company, not the consumer; and

WHEREAS, the primary feature of fixed indexed annuities is the safety of principal, not the allure of investments inherent with variable products, mutual funds, and other securities products; and

WHEREAS, the United States Securities and Exchange Commission (SEC) recently introduced proposed rule 151A which, if adopted, would treat most, if not all, fixed indexed annuities as securities; and

WHEREAS, SEC proposed rule 151A sets forth an unprecedented two-pronged test to determine if a fixed indexed annuity is a security product, which was devised by the SEC without demonstrating that such a test comports with Congressional intent and without a foundation in existing judicial precedents that interpret the exclusion of annuities from application of the federal securities laws; and

WHEREAS, it is believed that the SEC's rationale for proposing rule 151A is based on concerns raised by the SEC regarding the marketing practices used in the sale of fixed indexed annuities and a perceived lack of adequate state regulation; and

WHEREAS, the National Association of Insurance Commissioners (NAIC) and several individual state insurance departments have worked diligently in recent years to promulgate model laws and regulations and educate consumers to ensure the suitability of annuity products, including but not limited to adoption of the NAIC *Suitability in Annuity Transactions Model Regulation*, adoption of the NAIC *Annuity Disclosure Model Regulation*, publication of a buyer's guide on deferred annuities with an appendix for indexed annuities, and continuing development of consumer-friendly disclosure forms; and

WHEREAS, the strong efforts of state insurance regulators, both individually and collectively through the NAIC, to address issues relating to the sales and marketing of annuity products, including fixed indexed, traditional declared rate and variable annuities, are to be commended for making tremendous strides in educating and protecting consumers in the purchase of annuity products; and

WHEREAS, the National Conference of Insurance Legislators (NCOIL) believes that state insurance regulators are best positioned to regulate the marketplace for annuities, including fixed indexed annuities; and

WHEREAS, NCOIL further believes that any perceived advantages of the proposed rule would be outweighed by disadvantages in creating an extraneous layer of regulation that would interfere with existing state regulation and deter the sale and marketing of a retirement product; and

WHEREAS, NCOIL believes that straining the interpretation of securities laws in the manner proposed by SEC proposed rule 151A would cause confusion in the marketplace and could lead to other products being inappropriately classified as securities;

NOW, THEREFORE, BE IT RESOLVED, that NCOIL supports the existing authority of state insurance commissioners to regulate fixed indexed annuities and endorses ongoing efforts among state regulators to educate and protect individual consumers; and

BE IT FURTHER RESOLVED, that NCOIL opposes SEC proposed rule 151A and urges the SEC to withdraw its proposal; and

BE IT FURTHER RESOLVED, that NCOIL supports increased coordination and communication between state insurance regulators and both state and federal securities regulators for the purpose of identifying areas of mutual concern and to explore any potential opportunities to leverage regulatory resources; and

BE IT FINALLY RESOLVED, that NCOIL forward a copy of this resolution to the Commissioners of the Securities and Exchange Commission, the officers of the North American Securities Administrators Association, and the officers of the National Association of Insurance Commissioners.