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Dear David Dreier:

This provides my request for you to petition SEC Chairman Cox to cease his efforts to put proposed SEC Rule 151A into effect. I look forward to your swift response so that the insurance companies, independent marketing organizations, insurance agents and consumers will not be damaged by this unwarranted and uncertainty-producing incursion by the SEC into the state regulated insurance business.

Below are some points you may find helpful.

- **Fixed annuities are and have always been a matter for state insurance regulation, not federal securities regulation.** States regulate all aspects of these products, including company solvency and investment constraints, required contractual provisions, required minimum guarantees of value, agent licensing and education, product disclosures, all forms of advertising and suitability of product for consumers. Fixed indexed annuities (FIAs) fall under the insurance exemption of the Securities Act of 1933, were explicitly considered in Rule 151(1986) and were determined to be solely insurance in the Addison v. Malone (xxxx) case. The SEC itself has twice refused to make a securities determination in the last 10 years.
- **The proposed rule radically departs from all prior SEC action relative to insurance,** creates a new test out of whole cloth and is a slippery slope to drawing other products into securities regulation such as traditional declared rate annuities, indexed universal life insurance and traditional UL and participating whole life.
- **The SEC would seem ill-equipped to add to its plate the transition of this product to securities regulation,** including hundreds of registered product filings and 10's of thousands of filings for registrations as a securities representative. It is occupied with this unwarranted expansion of its jurisdiction at a time when it would seem to have more pertinent and crucial issues which are under its jurisdiction.
- **We believe the SEC, given its poorly reasoned and constructed proposal, will lose a subsequent legal challenge,** but in the meantime will wreck havoc on a \$26 billion industry, forcing unnecessary legal expenses, wasteful and expensive efforts to purchase broker-dealers, register agents and register products all of which will ultimately impact product availability to clients and raise costs.
- **151A has been proposed without any contact with the state regulators' coordinating body, the National Association of Insurance Commissioners.** How can such a regulatory power play be in the best interest of consumers when their current regulators have not been consulted? It seems the SEC has not even considered the difficulties and possible conflicts of dual regulation.
- **The SEC, FINRA and state securities administrators have not demonstrated that they can improve market conduct.** The primary

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motivation for 151A seems to have been concern about market conduct abuses by agents, mainly misrepresentation of the degree of linkage to equities and liquidity by non-disclosure of surrender charges. We know to the contrary that these are fully and prominently disclosed in the contract and collateral documents as regulated by the states. The vast majority of agents highlight these as required. The SEC has accepted anecdotal evidence of abuse over hard data. In fact, FINRA and NASAA have conceded they have no securities complaint statistics they can share to corroborate their assertions that they can or will improve the current .07% complaint ratio for FIAs.

- **The SEC's action would potentially restrict access to an increasingly popular product with the public.** It would assign the product to the Broker Dealer supervision world where it has often received a chilly reception among a sales force and management often dedicated to maximizing the sale of true securities, not insurance. The same is true of the FINRA and state securities administrators, generally if not uniformly. The value proposition of greater potential interest without compromising principal and minimum interest guarantees, with guaranteed payouts for life in a tax-deferred, industry guaranteed product is available nowhere else on the financial landscape.
- **The cost of 151A will surely be 10 times what the SEC has spuriously estimated and be borne ultimately by consumers and insurance agents.** It will approach a billion dollars, not to mention the soft costs of the transition period.
- **The SEC's actions put 1,000 well paying, Kansas jobs at risk** and that includes only the group which met with you yesterday representing 4 Kansas based IMOs and a major insurance carrier all of us are contracted with, AVIVA's (American Investors) Topeka operation. This doesn't count the hundreds of Kansas insurance agents we serve and the thousands of existing consumers in need of a fixed indexed annuity option.
- Given all of the issues above, **the time period allowed by the SEC for comment, discussion and implementation of 151A is inadequate.** A 75 day comment period was given and not extended despite more than a thousand negative comments on their website, many requesting extension. Commissioner Cox has vowed for whatever reason to push 151A through before the current administration departs. Only a 12 month period is allowed before all products for new sale must be registered, the SEC must develop the ground rules for approval, all agents must be registered representatives, all sales must go through a broker-dealer, all wholesalers (IMOs) must own or be associated with a broker-dealer to receive compensation, etc.
- **The "grandfathering" of prior FIA sales to insurance status is one indication that the purpose of Rule 151A is something other than consumer protection.** The SEC will exempt sales prior to the effective date from the new definition of optional annuity contract. If the product by nature is a security, subject to federal securities regulation, then why

would prior issued contracts not be subject as well? In fact, the way Rule 151A is currently written and their test for status is drafted, any particular annuity may drift in and out of securities status during its lifetime. A more confusing, disruptive and wrongheaded approach is hard to imagine.

I look forward to your support in the petitioning Chairman Cox to suspend his efforts to commandeer indexed annuities for SEC regulation. Thank you again for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "William H. Davis". The signature is written in dark ink and is positioned above the printed name.

William Davis