

# Baker Hostetler

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December 1, 2008

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## BY HAND DELIVERY

The Honorable Troy A. Paredes  
Commissioner  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *Congressional Opposition to SEC Proposed Rule 151A (File No: S7-14-08)*

Dear Commissioner Paredes:

I recognize that the Securities and Exchange Commission has been closely following the comments on Proposed Rule 151A, which would reclassify fixed indexed annuities as federally regulated securities. Thousands of comments have been filed, overwhelmingly in opposition to the Rule. There has also been substantial Congressional opposition to Rule 151A, including opposition by a bipartisan group of 19 Members of the U.S. House of Representatives and independent opposition by the Ranking Member of the House Financial Services Committee, Rep. Bachus (R-AL) and the second highest ranking Democrat on the Committee, Rep. Kanjorski (D-PA). I am forwarding a copy of these opposition letters for your review in the hopes that the Commission will withdraw Proposed Rule 151A.

The overriding problem with Proposed Rule 151A, as described in the aforementioned letters, is that it seeks to regulate a product that cannot properly be defined as a security and which is properly and comprehensively regulated by the states. More importantly perhaps, these Members of Congress have noted that Rule 151A would have the effect of limiting consumer choice in regard to financial products and would adversely affect the livelihood of independent insurance agents. Additionally, Congress has expressed concern about the resources and expertise needed to oversee such a major new regulatory responsibility, particularly where the Commission is focused on dealing with the current mortgage-related crisis in the financial markets.

**DEC 2 2008**

I hope that after reading the letters the Commission will realize that further action by the SEC with regard to Proposed Rule 151A is unwarranted.

Sincerely,

**BAKER & HOSTETLER LLP**

A handwritten signature in black ink, appearing to read "Tom McDonald", written over the firm name.

Atty. Tom McDonald  
Partner

cc: Chairman Christopher Cox  
Commissioner Kathleen L. Casey  
Commissioner Elise B. Walter  
Commissioner Luis A. Aguilar

**Congress of the United States**  
**Washington, DC 20515**

November 17, 2008

Honorable Christopher Cox  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

RE: SEC Proposed Rule 151A on Indexed Annuities (File Number: S7-14-08)

Dear Chairman Cox:

As members of the U.S. House of Representatives, we write to express our opposition to a recent proposal from the Securities and Exchange Commission ("SEC") that would significantly change the regulation of certain annuity contracts and negatively impact companies, agents, and consumers across the United States.

On July 1, 2008, the SEC published for comment a proposed new rule to reclassify, prospectively, state-regulated insurance products called indexed annuities as securities ("Proposed Rule 151A"). These products are currently used by millions of Americans to help achieve their savings goals. Proposed Rule 151A would have profound implications for the way these products are developed, marketed and sold. It would subject already state-regulated insurance products to dual regulation by federal securities law, registration requirements, and oversight, adding filing obligations and compliance costs. It would also require that such products be distributed exclusively by registered representatives of SEC-licensed broker-dealers, rather than independent insurance agents who are solely state-licensed.

While we strongly support initiatives by the SEC to improve protection of investors in the securities markets, we do not believe the SEC's proposal, as drafted, would provide significant added protections to such investors – certainly not sufficient to justify such a profound departure from the existing regulatory scheme for financial products enacted by Congress. Following are several concerns raised by some of our constituents that we believe merit serious consideration by the Commission.

First, the SEC's proposed release fails to make a convincing case that the products it seeks to assert its securities-law regulatory authority over are, in fact, securities. Indexed annuities provide contract owners with guaranteed minimum values – undoubtedly the most salient feature of this product, especially during market downturns such as occurred on September 15. While millions of investors in stocks and mutual funds recently lost billions of dollars in the value of their holdings due to such declines, indexed annuity holders lost nothing. As with traditional fixed annuities, the guarantees in indexed annuities are funded through the insurance company's general account and the company bears the burden of making sure it has sufficient funds to meet its contractual obligations to contract owners. The insurer bears the investment risk. Further, we

understand from our constituents and observe from the many comment letters filed with the SEC that the proposed rule as drafted is overbroad and may pull into its grasp many traditional annuity products that would further alter the regulatory scheme enacted by Congress for the regulation of financial products.

Second, as we have heard from constituents and state insurance commissioners, indexed annuities, the companies that issue them, and the agents that sell them are already regulated, inspected and licensed under state law and have been since the introduction of indexed annuities. For example, insurers and their products are subject to comprehensive state regulation with respect to investment and financial requirements, unfair and deceptive trade practices, and guaranty fund laws. Well over 30 states have adopted the National Association of Insurance Commissioners' ("NAIC") Suitability in Annuity Transactions Model Regulation, which governs the suitability of annuity sales, strengthens agent supervision and requires periodic review of records. Nearly every state has adopted the NAIC's Life Insurance and Annuities Replacement Model Regulation, which regulates the activities of insurance companies and producers when replacing existing life insurance and annuities. A number of states have adopted the NAIC's Annuity Disclosure Model Regulation, which provides guidance to insurers in developing disclosure documents and information. We understand from the NAIC that it continually subjects these measures to review and improvements to better protect consumers.

Further, we understand that every state requires a minimum level of competency for producers to obtain a license to sell, solicit or negotiate annuity products and continuing education to maintain their license. Thus, it appears to us that state insurance commissioners and the NAIC have taken the necessary steps to safeguard consumers. The SEC's proposing release fails to demonstrate that state regulation of indexed annuities has fallen short in some material respect sufficient to implicate the "federal interest" (as the SEC calls it) in providing consumers with the protections of the federal securities laws or what new/additional benefits would flow to consumers from such protections. To us, it appears that Proposed Rule 151A would only require duplicative disclosure and would not provide a net benefit to consumers.

Third, Proposed Rule 151A could have the effect of reducing product availability and consumer choice, effectively placing the cost of the regulation squarely on the shoulders of consumers. The collateral consequences would also affect the livelihood of thousands of independent agents that currently sell these products. The regulation would require these agents to register with the SEC as licensed representatives associated with broker/dealers, creating significant administrative costs, and would ultimately decrease the competitiveness of the industry as some agents would drop out of the indexed annuities market. All of the above factors will likely result in reduced consumer choice and higher consumer costs.

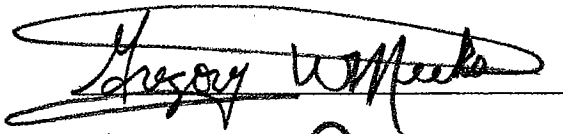
Fourth, we take issue with the process, or lack thereof, by which the SEC developed Proposed Rule 151A. It is our understanding that the concept release for Proposed Rule 151A was issued in 1997 – over ten years ago. We are aware that since that time, the market for indexed insurance products has grown substantially. Yet, in its proposing release, the SEC has adduced no studies or empirical evidence indicating a correspondent, widespread growth in losses to owners of indexed annuities. Further, save for a letter we understand the SEC sent to insurance carriers in mid-2005, the SEC appears not to have undertaken the sort of outreach to stakeholders

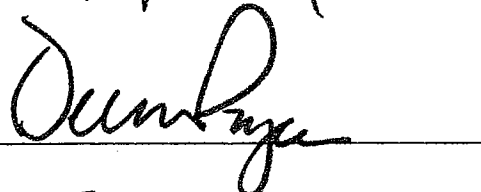
and Congress one would expect to precede such a major proposal. If this initiative is truly important to investor protection in the SEC's view, why has the Commission taken so long to bring 151A forth and why didn't the Chairman or other Commissioners fully explain it in their many appearances before Congress in recent months/years? We believe the SEC should have taken, and perhaps still can take, an approach that is more inclusive of stakeholder views and Congressional input on the front end.

Finally, we are concerned with whether the SEC has the resources or expertise necessary to take on such a major new regulatory responsibility, particularly in light of the fact that the Commission appears to have its hands more than full dealing with the current crisis in the financial markets. How would the SEC handle these new responsibilities? Would the Division of Investment Management and/or the Division of Enforcement require additional funding and FTE's? If not, how would the SEC provide additional oversight of these products? If so, would this distract from the SEC's current focus on dealing with the mortgage-related crisis in the financial markets? We think the SEC's top priority should be to address problems associated with the current crisis and work to get U.S. issuers and markets back on sound footing before taking on new authority.

While we strongly support initiatives by the SEC to protect consumers, we oppose Proposed Rule 151A because it does not adequately correspond to the issues it purports to address. Until the SEC addresses these concerns, and the many other issues raised by stakeholders, we believe further action by the SEC with regard to 151A is unwarranted. We urge you to withdraw the proposed rule, or at the very least, delay its adoption until our concerns have been fully addressed.

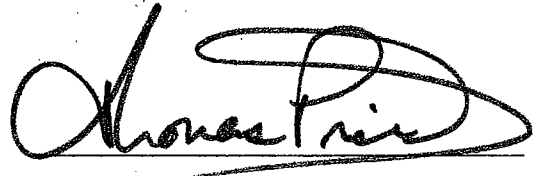
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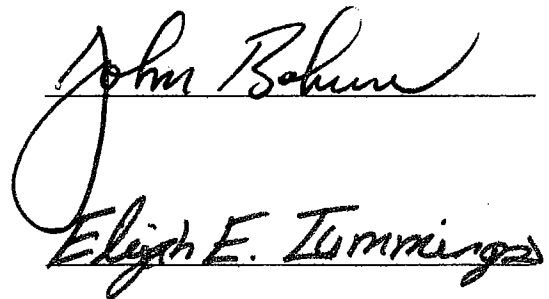
  
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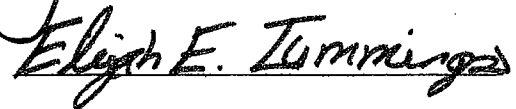
  
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Randy Newman

Chali #1 Wilson

Sam Paul

Pat Liberi

Jim Jensen

Tom Latham

Samuel B. Jackson

John Kline

Sam Jackson

R. Bowen

Samuel B. Jackson

Signatures on letter to Chairman Cox commenting on SEC Proposed  
Rule 151A on Indexed Annuities (File Number: S7-14-08)

1. Gregory Meeks
2. Tom Price
3. Deborah Pryce
4. John Boehner
5. Steve LaTourette
6. Elijah Cummings
7. Emanuel Cleaver
8. Pete Sessions
9. Randy Neugebauer
10. Charlie Wilson
11. Ron Paul
12. Pat Tiberi
13. Jim Sensenbrenner
14. Tom Latham
15. Leonard Boswell
16. John Kline
17. Dave Loebsack
18. Peter Roskam
19. David Scott

PAUL E. KANJORSKI  
11TH DISTRICT, PENNSYLVANIA

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AND GOVERNMENT SPONSORED ENTERPRISES

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Congress of the United States  
Washington, DC 20515-3811

November 17, 2008

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The Honorable Christopher Cox  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE, Room 10700  
Washington, DC 20549

Dear Chairman Cox:

On June 25, 2008, the Securities and Exchange Commission published for public comment a proposed new rule 151A under the Securities Act of 1933. This regulatory proposal would treat certain equity-indexed annuities as securities subject to the federal securities laws, rather than as insurance products subject to state regulation. In proposing this regulation, the Commission is seeking to provide clarity concerning the status of hybrid indexed annuity contracts under the federal securities laws, and to address reports of abusive, deceptive, and other inappropriate sales practices, particularly with respect to seniors.

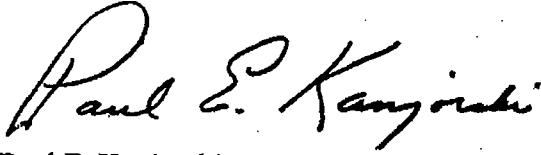
While I commend the Commission's efforts to protect consumers, especially seniors, against all inappropriate sales practices and to clarify the status of sophisticated products, this proposal has proven very contentious. As I understand, the Commission has already received more than 3,500 comments on this rule. Supporters and opponents of this regulatory change have also contacted the Congress, including many of my colleagues on the House Financial Services Committee, to express their views on these matters. Because of this controversy, I believe that a vetting via a public roundtable of the competing positions of state insurance regulators, state securities overseers, and other interested parties is very much warranted.

Moreover, the Congress, as you know, has announced its intention to undertake a review of financial services regulation next year and to consider comprehensive legislation to alter the structure of the industry's outdated oversight system. As part of these debates, we will examine investor and consumer protection issues. The proper regulation of annuities should be part of these debates. This product has evolved considerably in recent years and is now sold by banking representatives, securities brokers, and insurance agents. Our system of functional regulation for annuities has clearly failed to keep pace with the market evolution of annuities products. If the Commission were to convene a public roundtable to review these matters, it would help to inform the upcoming regulatory reform work of the Congress.



In sum, I respectfully request that you defer further action on the proposed rule 151A until the Commission convenes a public roundtable, giving key representatives of interested parties an opportunity to further explain their submitted comments on the proposal. Finally, thank you for considering my views, consistent with all applicable law and regulation, on these important matters.

Sincerely,

A handwritten signature in black ink that reads "Paul E. Kanjorski". The signature is written in a cursive style with a large initial "P" and "K".

Paul E. Kanjorski  
Member of Congress

United States House of Representatives  
Committee on Financial Services2129 Rayburn House Office Building  
Washington, DC 20515

November 19, 2008

VIA FACSIMILE 202-772-9200

The Honorable Christopher Cox  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Cox:

On June 25, 2008, the Securities and Exchange Commission (SEC) published for public comment two proposed new rules, 151A under the Securities Act of 1933 and 12h-7 under the Securities Exchange Act of 1934. These proposed rules would establish the standards for determining when equity indexed annuities may be considered securities subject to the investor protections afforded by the securities laws.

While well-intentioned, the two new rule proposals have been met with confusion, skepticism and opposition. During this period of market uncertainty and volatility, the Commission should use all of its tools to promote market stability, which would benefit all market participants including the least sophisticated investor. Even though I support the Commission's efforts to aggressively protect all investors from fraudulent and abusive securities sales practices, it appears that the SEC may not have clearly demonstrated the appropriateness of these proposals in relation to the protection of seniors and their equity indexed annuity investments.

I strongly supported the Commission's announcement on October 10, 2008 to extend the comment period for an additional thirty days. Before the adoption of final rules, the Commission, consistent with the Administrative Procedure Act, should convene a public roundtable with the North American Securities Administrators Association, the National Association of Insurance Commissioners, FINRA, annuity providers and other interested parties to ensure any equity indexed annuity rulemaking properly protects investors.

Thank you for considering my views.

Sincerely,

  
Spencer Bachus  
Ranking Member