



December 4, 2008

U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Attention: Ms. Florence E. Harmon  
Acting Secretary

Re: November 10, 2008 Meeting with Commission Staff  
Regarding Commission's Securities Act Release No. 8933,  
File S7-14-08

Dear Commissioners:

On November 10, 2008, I, as Chairman of the National Association for Fixed Annuities ("NAFA"), and other industry representatives,<sup>1</sup> met with the Commission staff ("November 10 Meeting") to discuss the Commission's proposed Rule 151A under the Securities Act of 1933 ("Proposed Rule 151A"). On November 25, 2008, members of the Commission staff called me ("November 25 Teleconference") to seek clarification on certain issues raised at the November 10 Meeting.

On November 26, 2008, the Commission posted on its website a memorandum ("Memorandum") to File No. S7-14-08 describing the November 10 Meeting and the November 25 Teleconference. I am writing to clarify NAFA's position regarding Proposed Rule 151A in light of certain statements in the Memorandum.

### **NAFA Position**

NAFA opposes the Commission's Proposed Rule 151A for the reasons set out in NAFA's comment letter of September 10, 2008 ("NAFA September 10 Comment Letter"), as supplemented by NAFA's additional comment letter dated November 17, 2008. NAFA believes that fixed indexed annuities are not securities based on statements that the Commission has made to the Supreme Court and on Supreme Court decisions. NAFA further believes that state insurance regulators are better positioned than the Commission to regulate fixed indexed annuities.

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<sup>1</sup> The Memorandum, defined below, defines the industry participants at the November 10 Meeting as Representatives of NAFA. As a point of clarification, I was the only person that attended the November 10 Meeting as a representative of NAFA.

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The Memorandum states that those present at the November 10 Meeting recommended that the Commission defer action on Proposed Rule 151A pending further developments by the NAIC to address market conduct issues, and that I recommended deferral of any action, other than a formal withdrawal, for one year. My recommendation was consistent with NAFA's position that the Commission continue to recognize and rely on current state insurance law and developing NAIC and individual state initiatives. Such initiatives are detailed in Section V. of NAFA's September 10 Comment Letter. My recommendation regarding deferral as a minimum does not affect NAFA's position that fixed index annuities are not securities, and that Proposed Rule 151A is invalid for the reasons stated in NAFA's September 10 Comment Letter and should be formally withdrawn.

In short, deferral would give the Commission adequate time to withdraw Proposed Rule 151A.

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If the Commission has any question or needs further information, please contact James F. Jorden at 202-965-8135, 305-347-6801, or [jfj@jordenusa.com](mailto:jfj@jordenusa.com), or Gary O. Cohen at 202-965-8152 or [goc@jordenusa.com](mailto:goc@jordenusa.com).

Very truly yours,



Malott W. Nyhart  
Chairman of the Board, NAFA

cc: The Honorable Christopher Cox  
The Honorable Kathleen L. Casey  
The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes

Andrew J. Donohue, Director, Division of Investment Management  
Susan Nash, Associate Director, Division of Investment Management  
William J. Kotapish, Assistant Director, Division of Investment Management  
Keith E. Carpenter, Senior Special Counsel, Division of Investment Management  
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