

Securities and Exchange Commission

Reference File number S7-14-08

In regards to your rule change for “Annuity Contracts” with the intention of clarification of the status under the federal securities laws of indexed annuities.

I had the opportunity to read your notice and solicitation of comments and also the NASAA comments to your proposal.

As an investor myself for many years, as well as a professional in this industry and one approaching the age of what would be a normal retirement for many of my peers, **I find these articles as offensive under the suggestion you are doing this for my protection or that of my peers.** And let me explain myself the driving force as FINRA and NASAA is pushing is the protection of investors but primarily “Seniors” and with out saying it “Boomers” about to be seniors. Implying that they need protection is not the real driving force here and we all know this, the real concern is the money and who is making money from where it is being placed, that is the true motivation. Let us be honest FINRA and NASAA see a lot of money leaving the market which they regulate and gleam dollars from under the idea of protection for retirement to a vehicle that does not fall under their jurisdiction and the most popular form is called a Fixed Index Annuity. This vehicle provides preservation of principle, the ability to provide a structure income stream in retirement, tax deferral, potential growth and contractual distribution at death. Therefore they are on a campaign to bring this vehicle under their sphere of influence.

I’m a CEP and maintain my designation through the National Institute for Certified Estate Planners, and I work with a licensed attorney, along with a CPA and a RFC in a network relationship to serve our clients. We use various products as stand alones and in conjunction with legal vehicles to structure estates to meet clients’ short term and long term estate goals. We do a Needs Analysis and look at possible threats and concerns they need to plan for both on the short term and long term basis. We are in a relationship with our clients that usually span the rest of their lives and we try to reach clients in their 50’s but most are in their 60’s and 70’s and some in their 80’s. **I’m a license insurance agent and therefore have a vested interest in your ruling as I use Fixed Index Annuities as one of my tools to meet our client’s needs.** I would say I’m an educated man with 5 degrees from several colleges under my belt which include accounting and finance. I believe ethical principles, honesty, and full disclosure are required ingredients in the application of any product and dealing with any client, and therefore subscribe to the National Ethics Bureau.

My education and experience as an investor would say that a security is a vehicle where the investor takes all the risk of loss to market trends as well as benefits from all the gains of those same trends. By buying and selling at the right time and reinvestment the dollars I invest can over time grow and should out pace inflation. **Time is the key factor**, as an investor myself, I must recognize that if I'm investing in securities my focus is not the annual return but where I will be 15 to 20 may 25 years from now in other words a long term strategy. If you look at history every Bull Market has been followed by a Bear Market and the Bear market is longer than the Bull Market. **But let me ask you do you believe that all seniors have the time to devote 15 to 20 years for a long term strategy?**

The same education would say the simplistic definition of insurance is where the client buys a policy / contract with an insurance company as a saving vehicle where he/she is rewarded an interest rate based on prescribed factors described in the contract. The insurance company is taking the risk on any investment and the clients' principle is guaranteed providing they honor the terms of the contract. **Would you not agree?** A Fixed Index Annuity ties the interest rate reward to the market price index but the clients' funds are at no time in an invested in a security and they do not benefit from 100% of the market gain but they also do not risk a loss of principle. Correct me if I'm wrong but the index is in itself not a security but a measurement of stock prices and their trend. Therefore a FIA is truly an insurance product and under the jurisdiction and regulation of the insurance commissioner of the state they are being marketed under. I call this the chicken market because the investors here prefers the return of their principle over the return on their principle; in fact most are just trying to get a better average return then inflation with tax deferral. Of all the articles, I have read from much more educated men then myself, who have done studies of the return on FIA, claim returns average between 6 to 11% and the average commission to an agent is between 5 to 7%.

I know that my last case with a client I made a whopping 2% on a FIA sale. Yet the NASAA as well as broker/dealers would like everyone to believe that insurance sales person makes huge commissions on the sale of a FIA and that is why he recommends them to clients. I spend on an average of 3 visits with a client that includes a full estate analysis of their assets and a definition of their goals, concerns and threats to their estate. We never give just one solution and the client is always in charge and we act from a consultant point of view. Keep in mind for that 2% commission I have committed to the client to service his account as long as he has it.

NASAA claims that they are concerned that these products are being sold using deceptive marketing tactics and so call senior citizens “**Free Lunch**” seminars. Let's be honest Brokers are also out there selling Variable Annuities, Mutual Funds, REITS and even Stocks through “**Free Lunch**” Seminars to seniors. I have several Mutual Fund jockeys in my city that have “Free Steak Dinners” advertised for Senior Investors for attending one of their seminars. **You know the bible talks about plucking the splinter from your neighbors' eye when you have a log in your own.** And this is the case with FINRA and NASAA they need to look to their own. **NASAA cited that “according to an enforcement survey they had 34 percent of cases of senior exploitation reported to state securities regulators on variable or equity indexed annuities” on their response to your announcement of the ruling.** But this does not jive with figures I have read about where FIA out of all insurance products has the lowest complaint or claims issues of less than 2%. Now I would believe that figure about Variable Annuities because I see abuse on a daily basis where seniors and boomers are told that their principle is safe 100% from market loss where the agent “**under FINRA jurisdiction**” has glossed over that detail that applies to the life insurance rider the client is paying for and to collect you have to die. It has nothing to do with the cash value of the account if you need your funds and **must** withdraw them that is based on market conditions at time of liquidation. I have talked to seniors that clearly state to brokers that they cannot afford **any risk** of loss to their principle. Yet the brokers place them in Mutual Funds anyways or a Variable Annuity – why because you and I know because their up-line has imposed a quota to them and they must meet their sales requirements – the client needs or concerns are not a factor that is again glossed over.

I submit if regulation by FINRA or NASAA was the answer their house today would have the best record for complaints or claims. Just look at the details closely gentlemen and please put your pocketbook away and truly look at the needs of the investor boomer or senior. I sure the fact will support my premise that regulation by a broker/dealer is not today making an impact, that there is abuse on their side of the fence more than what is going on the fixed side. All their regulation is doing is greasing more palms and giving FINRA more power. If this is not true how do you explain Security Seminars for “FREE Lunch or Dinner” to seniors going on? If this is not true how do you explain Register Reps placing Senior money in Variable Annuities and the high rate of complaints against them? And the list goes on....

Don't believe me? I read an article published by a Ph. D where he tested web sites on mutual fund companies or brokerage firms for the free use of their asset allocation program. Where he took the most conservative stance they would allow in their questions to assess risk for a 65 year old clients retirement savings. He received the lowest risk tolerance score available yet did they suggest he put his money in a saving vehicle and

not in the market, **the answer was no....** they suggest a mix of Corporate Bonds, US Large Cap Stocks, US Small Cap stocks, US Treasury and International Stocks. Where would this seniors principle be today? I would agree in time the market will rebound but again the article showed that they were following the money that they would make, not the clients needs or concerns. I also read an article that was commission by the Advantage Group. The study was conducted over a 5 year period of 1998 to 2003 where that the index value ended at a lower value then where it started. It compared the performance of the different investments and saving vehicles for that complete period of time. The conclusion was that a FIA did exactly what they were suppose to do – participate in the index advances 1998 and 1999 and then protect the interest credited in early years during the declines in 2001 and 2002 and then reset at the indices lower levels to take advantage of the index climb in 2003. The average total return for FIA = 36.72% or 7.3% average yield does that not make it a viable saving vehicle for a senior or for that matter for many investors? But the NASAA would like to lead us to believe that investors can lose money in these insurance products and many senior do..... **But the truth is only if they break the contract prematurely.** I ask you if you enter into a contract for a loan on your home or car or business dealing and you do not hold up your end of the bargain will their not be consequences for breaking the contract? An insurance contract is no different and when correctly applied and explained my clients do not have problems.

We all have bad apples, agents that need to be rooted out an eliminated from our profession both on the Security and the Insurance side. To Prey on anyone is wrong no matter what their age but it is not the product that is the issue it's the individual that is applying it. **It all boils down to ethics and honesty and providing full disclosure.** It's obvious that NASAA and FINRA do not have the answer, and they have not clean up their own problems and they are picking on the insurance industry. As a insurance agent applying FIA to client I'm well aware of big brother looking over my shoulder and insurance companies policing through suitability forms who is right or wrong for a product. I run a clean practice and I vow to always place my clients needs above my own and work in a professional manner to guide the client through the confusing maze of many life planning strategies even if that means walking away from the sale. An educated client makes the best client because they have the tools to make an educated decision and understand the pros and cons to their choices. And when dealing with older seniors encourage them to have their family review the plan and even meet with us.

I do not support SEC in redefining the FIA as a register product where it's clearly a Fixed Insurance Product and the motivation by NASAA and FINRA is not protection of a client but who gets paid for the sale on that product. I say if they can clean up their own house eliminate the abuse on their side then we would have something to talk about but today they have the same abusive practices and bad apples that the fixed insurance side but as the number support a lot more. When their house is cleaner then the insurance fixed business side then let them come suggesting more regulation.

I want to be a part of the solution not a part of the problem and therefore I suggest more education of insurance agents on FIA and not those provided by the insurance companies but approved credited classes with no bias to one product or another. Require an 8 credit hour course every two years on Index Annuities for agents if you are going to sell them similar to what some state are doing for LTC insurance. And require that agents must be members of the National Ethics Bureau which will root out some bad apples.

If NASAA sees Free Lunch seminars as abusive marketing tactics then maybe outlaw “FREE LUNCH or DINNER” Seminars – **but for everyone Insurance Agent and Register Rep Series 6 or 7 or RIA.** Make sure to include wording to eliminate free tickets to a Broadway Show or other enticement. I am more than happy to compete for my clients on an equal playing field. I’ll start doing classes at the local college on Continue Education on Estate Planning or Safe Money Solutions and all I’ll serve is “Good Information” and I still will have a full house.

But to deem something a security when it clearly not and do so under the guise that I as an investor or my peers as investors or for that matter any market segment needs your protection through regulation that is not today working, **is ludicrous.**

My father believed in the “Right of Free Speech” and taught me that if you have an opinion based in fact you must voice it for the benefit of all. If you believe in something you must stand up and fight. Your vote does not count unless you express it!

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