Response to SEC on Safe Harbor Rule 151(A)

I do not believe that Fixed Indexed Annuities (FIA's) should be registered products. The conclusions included in the SEC's proposed rule that states that all FIA's should be registered are based on misrepresentations of fact and flawed logic.

The proposal makes several references comparing FIA's to variable annuities and mutual funds including comments that these products have similar characteristics of gain/loss for consumers and potential loss of principal. This is not a correct statement.

FIA's are fixed annuities that use an external index to provide interest credits each year. In any given year, the policyholder can either be credited 1) zero, if the index has fallen or 2) a portion of the positive return on the index. This is completely different than other securities products and offers a measure of protection only insurance products can offer. Only fixed annuities, including FIA's, can provide a guaranteed minimum value at any point over the lifetime of the product. Any statistical risk analysis comparing the risks and variability of returns of an FIA versus variable annuities or mutual funds would show lower returns and lower variability of returns for FIA's.

Annuities, including FIA's, provide underlying guarantees that are regulated by state nonforfeiture law. These laws specify the amount of guaranteed interest that must be credited to the consumer's accounts, regardless of actual index performance. This level of guarantee is not provided in any products that are regulated by SEC.

There are also several references in the proposal on the fact that the guaranteed interest rate may be as low as 1%. This is in reference to the nonforfeiture law as it applies to all fixed annuity contracts. This law was updated by the NAIC due the low interest rate environment where it was becoming difficult for insurance companies to provide the 3% contractual guarantee from the previous law. The nonforfeiture interest rate is specified by law and is not at the discretion of the insurance company. This law was designed by the NAIC to protect the solvency of insurance companies so they will be able to meet their contractual obligations. Currently, guaranteed rates for all contracts are at 3%.

The owner of an FIA product has no actual ownership of any securities in the product. The assets backing the product are held in the general account of the insurance company. For variable annuities, mutual funds, stocks, bonds, etc, the consumer has direct ownership of the underlying securities that they have purchased. For FIA's, the risk of actual performance of the underlying securities versus the return the consumer received is fully transferred to the insurance company. For VA's and mutual funds, the risk of return is fully transferred to the consumer.

The proposed rules reference the potential loss of principal in FIA's that makes them similar in risk to variable annuities. This is also inaccurate. The only way an FIA owner can lose money is by making voluntary withdrawals that trigger a surrender charge. These surrender charges are regulated and limited by state law and are only applied on voluntary premature termination of the policy. Registered products can cause loss of principal by the actual performance of the securities purchased. This is an involuntary loss of principal.

The proposed rule states that buyers of FIA's have not had the benefit of Federally mandated disclosures. The document fails to mention that annuities are subject to state insurance regulations. There has been a plethora of changes and updates by state regulators and insurance carriers over the past several years that have significantly improved the sales practices and disclosure on FIA's. There is already now nearly as much paperwork to sell an annuity as there is to sell a life insurance contract. Adding another layer of regulation is going to create confusion, increased costs and not help the end buyer. Also, an insurance product buyer has access to the state to handle complaints that does not require legal council to be engaged up front. The consumer and taxpayer can utilize the services of the state free of charge to resolve most complaints.

I understand that the Dateline NBC story on annuity sales practices was being shown at the hearing and that consumer protection is a major motivator for this new rule. What was missing from the report is the much larger number of Americans that have lost significant portions of their retirement assets from bad investment advice. With Bear Stearns, Fannie Mae, Freddie Mac and other non-insurance financial institutions in trouble, the SEC and FINRA should concentrate on taking care of their own house.

If the SEC feels that 151 Safe Harbor Rule needs to be updated, then I believe a better definition of what should not be considered a security should have the following criteria.

- Annual guaranteed minimum return (per state nonforfeiture law)
- No direct ownership in the underlying security
- Utilization of ratcheted crediting methods where the consumer cannot lose policy value due to negative returns of the index

Thank you for your consideration,

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