Fixed Indexed Annuities are excellent products that give consumers guarantees, flexibility, tax-deferral, and many other advantages. While FIAs are not for everyone, sales of this innovative product have soared in recent years because they give consumers a unique combination of guaranteed protection and opportunity for higher accumulation than traditional fixed annuities.

The SEC's draft regulation (Rule 151A) adds an unnecessary layer of securities regulation to this insurance product. Rule 151A would turn most FIA products – as well as more non-indexed traditional fixed annuities -- into securities. This development would subject them to an unnecessary layer of securities regulation. This will have far-reaching consequences by disrupting the manner in which these products are sold today, causing confusion over the differences between insurance versus securities, and ultimately providing little additional consumer protection at tremendous cost to companies, agents, and ultimately consumers.

Proposed Rule 151A is ill-conceived. Many securities lawyers find the SEC proposal to be confusing and completely unsupported by judicial precedents on what constitutes an "annuity" exempt from securities laws. Beyond that, it defies common sense that a product which has virtually no market-related downside risk should be considered a security in the same manner as mutual funds or variable products where investors truly bear risk for market losses. Many observers think the SEC's proposed regulation – if adopted – is a slippery slope towards reclassifying many other annuity products as securities. This seems at odds with Congressional intent.

FIA products are heavily regulated by state insurance departments. Through the NAIC, state regulators have worked hard over many years to come up with appropriate suitability and disclosure requirements for FIA products. To the credit of state insurance regulators, this work continues today and should not be derailed by the SEC's unilateral action.

Criticisms of FIAs have been exaggerated and market abuses have been largely corrected. The SEC – along with other critics – has focused on abuses in the marketing of these products. Needless to say, there are abuses in the marketing of all financial products including many that are already regulated by the SEC. The fact is the FIA market has grown rapidly because there is a demand for these products and generally consumers have been pleased with the results. While there have been some inappropriate sales (as with any innovative product) those concerns have been largely addressed by new regulations and evolution of products themselves which today generally have lower surrender charges and shorter surrender periods. FIA products and the FIA marketplace will continue to evolve to meet customer needs despite efforts by critics to paint the entire industry with one brush.

The recent downturn in the stock market highlights the value of FIAs. While millions of Americans suffered financial losses as a result of a twenty percent plunge in the stock market, FIA holders have not lost a penny in retirement savings because of this market turmoil. FIA holders have peace of mind that market fluctuations do not adversely affect their retirement savings.

The SEC proposal has not been appropriately vetted for comment – and appears to be being rushed to adoption. With virtually no forewarning, the SEC unveiled this proposal on June 25th and has allowed for comments only until September 10th. This means a proposal with profound effects on the insurance industry could become law within just a couple months even though agents and insurers have had minimal opportunity to evaluate, comment, and possibly offer alterative approaches to address any valid concerns. This sudden action comes ten years after the SEC first identified this very issue that was then left dormant as the FIA market grew and evolved over many years. Fair play demands that a proposal of this magnitude not be rushed or adopted hastily.