August 15, 2008
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Release Nos. 33-8933, 34-58022; File No. S7-14-08

Dear Commissioners:

As a financial planner with 23 years of investment experience, I believe that indexed annuities should be regulated as securities.[1] I am also writing this with the support and assistance of my sister, who is an attorney and an active member of PIABA and represents the elderly in certain financial matters. It is true that the states are capable of regulating the product, but they are not stepping up to the plate. The states' concern is solvency. Consumer protection is also sought after, but the states seem content as long as the legalese contract describes the product, rather than being concerned that the agents selling the products do so in an honest fashion. (*Where is Mr. Spitzer when we need him?*)

The first problem is inherent in how insurance products are sold verse how securities are sold. Insurance agents are sales people, while those who sell securities are fiduciaries. This is an important distinction as an insurance agent does not necessarily have to look out for a customer's best interest. This is not to say that many do not try to look out for their clients, but a portion does not.

The purpose of this letter is not to enter into a legal debate which arguably can go either way. Rather, my intent here is to respond to many issues raised in the other comment letters that are in opposition to rule 151A.

1) Many comments seem to state that there is no investment risk in an EIA product. This, of course, depends on one's definition of risk.

    - In finance, risk is given the term "beta" which relates not only to downside risk but upside potential as well. EIAs have an undefined upside potential and there is therefore risk.

    - More generally, offering minimum interest at 1% also describes risk. The real rate of return (reflecting inflation) is negative. Meaning, if one earns 1% annual interest, an individual will have less spending power at the end of the year than he had at the beginning of the year. The possibility that interest is only 1% a is therefore a risk (a potential for losss). Hoping for additional interest that could allow one to keep up or exceed inflation (based off of market performance) could be described as market risk.

2) Referencing the protection of principal is a faulty argument. First, with surrender charge schedules, it may take a number of years just to break even. Further, using the argument above, principal protection is less relevant than maintaining the same spending power as one had when they purchased the contract.

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[1] I have sold exactly 1 indexed annuity because the customer insisted upon it and I could not dissuade her. My wife was please with the check I received, however, I was not comfortable with that allocation. At least it was only a small fraction of my client's net worth.

- Granted, fixed interest rate annuities do not necessarily keep up with inflation, however, they are exempted under a different rule, rule 151. Further, the contract owner at least knows what he is getting up-front.

3) Some argue that because indexed annuities are regulated by state insurance regulators, they are not securities. However, the status of a financial product as a security or insurance is not mutually exclusive. Variable annuities and variable life insurance are regulated both by the SEC and state insurance regulators. Therefore, indexed annuities can likewise be regulated by both the state and SEC, as both insurance and a security.

4) Many commenter's suggest that the product has no fees and charges (other than a surrender charge). This is plainly not true. It is simply that, other than the surrender charge, charges are reflected in the low interest rate, rather than their own line item. (A 2% interest rate with a 1% charge is the same as charging 1% interest.)

5) Citing the performance of EIAs over the past few years is hardly a compelling case. If one product outperforms another product, does that mean the former is not a security? No, the argument is flawed. Further, as a general matter, past performance is not and should not be indicative of whether a product is a security.

6) Some argue that indexed annuities have no risk and can fully participate in market gains. This just shows how little these folks know about the products they peddle. First, market gains reflect dividends, index gains do not (this means approximately 25% of market gains are lost from the start). EIAs also have caps, participation rates and spreads which further reduce gains. Therefore, one cannot fully participate in market gains. If you assert to a client that they can fully participate in market gains, you are not doing right by your client.

    - One commenter even suggests that his clients returned between 25% and 37% annually. Given market performance (excluding dividends) since EIA began being produced and the indices available for indexed linked returns, such a return is simply not accurate. If this commenter makes such a representation to his clients, he is committing fraud.

7) Some argue that indexed annuities are not directly affected by the securities markets. This is not accurate. If the securities that underlie the relevant index increase in value during a given period, the contract value increases (this is a direct effect), and if the value remains neutral or falls, the contract value will grow at some nominal interest rate (which is the direct result of market performance).

8) Some state that EIAs are compared to CD's and fixed annuities rather than other products so should not be a security. In the bank distribution channel, mutual funds, including money market funds, compete only with CDs, savings accounts and fixed annuities, would you argue that these mutual funds should not be securities? This is unlikely.

9) It is argued that EIAs are strictly an insurance product. This is not the case. The only insurance feature is the annuitization feature (which insures against outliving your assets). The vast majority of contracts are never annuitized. In fact, the principle reason the annuitization feature is included is to maintain the product's deferred tax status under the internal revenue code. The accumulation phase has no insurance characteristics. Principal protection does not create

insurance; there are plenty of securities that can and do guarantee principal. Below are some examples:

- Treasury securities, which are guaranteed by the federal government, are securities;
- Municipal bonds and some corporate bonds, which are backed by bond insurers, are securities;
- Fannie Mae, Freddie Mac and other GSA debt instruments are implicitly guaranteed by the federal government;
- An equity security bundled with a put option would be a security;
- A variable annuity with a mandatory guaranteed payout benefit would be a security;
- Mutual funds with guaranteed payout benefits are securities; and
- A guarantee of a security (which is like insurance) is itself a security

10) Some state that the large surrender charge period are equal to or less onerous that the 1% annual charges assessed against securities accounts by financial planners. This is true; the aggregate fees paid might be equal or greater for financial planners. However, financial planners also give ongoing advice and guidance. This is in contrast to an insurance agent, who on a contract with $400,000 in premiums can earn a commission $60,000 (15% commission) based off an hour's worth of hard sales and then provide little if any follow-up to the customer.

11) Most plainly, the major pitch of indexed securities is not the 1% guarantee; it is the potential for gains based on securities market performance. That would have the contract fail the marketing test recognized by the courts for helping to determine whether a product is a security.

12) Some argue that the ruling in *Malone v. Addison Ins. Marketing* is definitive proof that EIAs are not securities. First, this was only a circuit court decision. Second, the ruling, as a matter of law, is wrong. EIAs do not satisfy the requirements of rule 151. Rule 151 is available only for annuities that apply an indexed interest rate prospectively rather than retroactively. In an EIA, the amount of interest is determined at the end of the year to contract value held during that year (based off of index performance during that year). This is applying interest retrospectively and therefore rule 151 does not apply. Third, the ruling is simply an interpretation of an SEC rule. The SEC is free to make new rules and modify existing rules. Rule 151A would make EIAs no longer subject to rule 151, because rule 151 deals only with "annuity contracts" or "optional annuity contracts". Rule 151A would make it so EIA's are not "annuity contracts" or "optional annuity contracts." Therefore EIAs would not be able to rely on rule 151.

13) Many argue that the SEC should not regulate the products, but instead should go after the "bad" people selling the products in a disingenuous fashion. The SEC has no power to go after these unsavory people if the products they sell are not securities.

14) Categorizing EIAs as securities does not limit competition There are plenty of registered representatives out there willing to sell EIAs and there are many EIA issuing insurers that will gladly register their products. Insurance agents (not licensed to sell securities) not being allowed to offer other market-related products is what limits competition. This burden on competition has been an unfair burden in favor of EIAs for the past 11 years.

15) It was argued that the SEC, in 1997, declared the EIAs are not securities. This is not true. All the SEC did was solicit the views of the public and insurers as to how the products operate and

whether they should be securities. No determination was made. Even if a determination was made (which it was not), as financial products evolve, the status of those products can and should be reassessed. For instance, in 1997, most contracts had a guaranteed minimum interest rate of 3%. Today, due to new state non-forfeitures laws, many contracts offer a mere 1% guaranteed minimum interest. Clearly this change would have an effect on whether the products are judged as securities (particularly based off of the test proposed in rule 151A).

16) Some asked why not hold market value adjustments (MVA) to the same standards as indexed annuities (i.e., is it more likely than not that an MVA might be applied?). There are many registered MVAs, as pointed out in the proposing release. These registered MVAs appear to be the products that may fall outside state non-forfeiture laws. That said, interest rates used in most MVA calculations are at the insurer's discretion (subject to certain minimums). Although, the decision may be based, at least in part, on prevailing market interest rates, they are also based off of competition..., and in the end, can deviate (at the will of the insurer) from market interest rates. However, another compelling reason not to force these MVAs to register is that the interest rates are usually tied, in part, to t-bills or treasury STRIPS interest rates. If these government securities do not need to register (and are even exempt from federal securities laws (section 3(a)(2) of the 1933 Act)), it would be awkward to make MVAs, whose value may be partially tied to these securities, to register.

17) It is said that thousands of insurance agents may be disadvantaged if this rule were to pass and it would be costly to firms. I argue it would not be costly, but rather a transfer of wealth from those who chose not to register as broker-dealers or enter into networking arrangements to those that do (as well as to those who issue and sell similar products). Also, the lost jobs will be taken up by new registered representatives who will help meet the new demand. I believe there should be a nominal total net effect. Further, insurance agents may lose business, but better they lose a percentage of their business than seniors having the bulk of their investments in unsuitable products.

18) Many argue that this rule will hurt small entities. This may be true, but I believe the benefit to the owners of such products outweighs the burden on small entities. Here is an analogy to make my point clear. If a small business makes or sells a toy that is not safe for children, we would not let them continue to sell that product simply because the offending entity is a small entity. This is because product safety is our primary concern (and should be that of the manufacturer and seller as well). Similarly, if EIAs are not safe for the elderly while unregulated, they should be regulated regardless of the effect on small entities. In sum, being a small business should not be a viable argument around consumer safety.

19) Some argued that EIAs are not securities because they are not listed on an Exchange. This has never been a requirement of securities. There are plenty of securities not traded on an exchange (e.g., variable annuities, fixed annuities with an MVA feature, open-ended mutual funds, etc.).

20) Some have argued that if the product has the name "index" in the name of the product, it should be a security. If the product is renamed and called a variable interest annuity, it should not be a security. This argument is foolish. What makes a security a security is not its name, but how the product operates. Realizing that marketing is a factor, still, the term "index" in the name of a product would not make it a security. Similarly, renaming a product should not remove a product from being a security.

21) It is argued that the products are necessary and useful to investors. If true, the products can be equally useful to investors once they are registered. There are also plenty of alternatives out there for investors who want guaranteed growth of their assets (e.g., CDs, t-bills, etc.). In addition, once registered, the products can be more innovative as they would no longer be bound by state non-forfeiture laws.

22) The classification of most EIAs as securities would be a benefit to investors. It would give investors more choices. Currently, most insurance agents cannot sell securities. Therefore they cannot offer their clients a full range of products that might meet their needs. That is unfair to the investor. If you only have one product that can participate in market growth and have some protections on your shelf, you may not be offering your client the best possible option available to them. An index annuity may be the best product in you arsenal for many clients, but that may be because your arsenal of products is too limited. EIA's should be evaluated against fixed annuities, variable annuities, mutual funds and a host of other products. Unfortunately, and to the client's detriment, most insurance agents do not have these options available to them.

23) In addition, let me say that it is disturbing to find that many people purporting to be insurance salespeople cannot seem to draft a coherent sentence. If they cannot draft a coherent letter, they probably cannot understand how these complicated products operate.

24) Otherwise, I find it laughable that many who commented on the rule believe the rule was pushed by Wall Street securities firms, with no basis or support for such a belief. If commenters' believe that is the case, please cite your sources. Insurance companies are just as large and influential as Wall Street firms. In fact, many own their own broker-dealers. Many EIA issuers also sell variable annuities so they already have the distribution network in place to sell EIAs if they are declared securities.

25) The burden on agents is not high. To get a securities license requires passing a written test which is nothing more than simple memorization and some arithmetic. If an agent cannot manage to pass this test, they are not qualified to sell EIA products, as EIA disclosure is far more difficult to understand than the concepts tested in licensing exams.

26) Many argued that under NAIC statistcs, there were only 191 complaints regarding EIAs in a given year. This statistic seems flawed based on the fact that there are several pending and settled class actions going on with regard to equity indexed annuities. These classes each have thousands of class members.

27) Let me also response to some points made by several clients.

    a) Many argue that FINRA pushed this rule on the SEC. FINRA has no control over the SEC; if anything, the SEC is the body that has ultimate control over FINRA as the SEC approves of all of FINRAs rules and major actions.

    b) The SEC does not bail out investment banks and mortgage companies. In fact, it has no means to bail out anyone. The U.S. Treasury and Federal Reserve did the bailing out.

    c) The SEC has no control over oil and commodity prices. That is presided over by the CFTC.

d) Filing fees and penalties for enforcement matters do not go to the SEC or its staff. This money is put into the Treasury. The SEC's budget is fixed, and makes a lot more money for the government through filing fees and enforcement actions that it is actually allocated to perform its vital function.

e) EIAs are not destroying variable annuities in the market place. Variable annuities have 13 times the contract value outstanding that EIAs have. Many argue that variable annuity producers are pushing this rule to give variable annuities an edge. This is not true as many variable annuity producers also produce indexed annuities.

The release does raise certain questions.

1. For instance, would an equity indexed annuity that participates in gains of the Lehman U.S. Treasury Bond Index (such as those offered by FBL Financial Group, Inc.) have to register even if it fails the "more likely than not" test? [I do not know why one would need principal protection when government securities already offer these protections, but I digress.] Since the securities underlying the index do not need to register, would the EIA still have to register? It seems it would be a peculiar instance if that were the case.

2. Would an MVA fall under the rule if the MVA was directly tied to bond interest rates or yields? If yes, would the MVA still need to register if the bonds in question were government securities that need not register?

3. Please clarify whether a product that satisfies the rule 151 safe harbor, but would not be an annuity under rule 151A would be a security or not.

4. If registered (though not under the Investment Company Act), would the SEC hold EIAs to the same standard as variable annuities? For instance, would loads be capped at 9%? Would redeemability be required? Would Exchange activity to regulated? And would NASD/FINRA rule 2821 be extended to EIAs? It seems peculiar that EIAs may not be held to the same standards as Variable annuities (despite the fact a VA is a Registered Investment Company).

5. There is a great deal of discussion regarding the establishment of a federal insurance regulator. If this is a realistic possibility, please consider carefully whether this new rule is wise. The industry should not be turned on its side, just to be turned on its side again when a federal insurance regulator wants to take a crack at indexed annuities.

6. Would the staff create a form specific to EIAs? Would this form be similar to Form N-4? Also, in order to avoid additional costs and strains on the insurers, if the SEC intends to create a form specific to EIAs, they should do so before the commencement of the 12 month effectiveness waiting period. It would be an unfair burden on the insurance companies to go through the process of creating a disclosure document compliant with Form S-1, to then have to revamp all of their disclosure a year or two later to comply with a new form-type.

7. Are equity linked CD (in spite of section 3(a)(2) of the Securities Act) and Indexed Universal Life next on the SEC's list of products to regulate?

If this rule cannot survive on its own, perhaps a compromise can be reached. The SEC can grandfather out all existing agents from the securities licensing requirements. This should maintain the clients status quo. The investor will be protected by better disclosure (via a prospectus) and the antifraud provisions of the federal securities laws. Any new insurance agents have no reason to complain because they will know exactly what industry they are entering and what the requirements on. In addition, those new agents will also be able to sell securities which will give their offerings more breadth and greater profit potential.

In sum, many of the commenters seem to be concerned with maintaining their meal ticket rather than looking out for their customers. If having these products be judged as securities helps improve disclosure and improve the conduct of sales people, then that is enough of a reason to have these products be ruled securities.

Thank you for your time and kind consideration in this matter.

Sincerely,

John W. Chang

cc: Michael L. Kosoff, Attorney
Keith Carpenter, Senior Special Counsel
Christopher Cox, Chairman