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August 18, 2008

Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street
Washington, DC 20549

Re: Request for an Extended Comment Period on Proposed Rule 151A and Proposed Rule 12h-1

Dear Ms. Harmon:

ACLI is a national trade association with 353 members that account for 93 percent of the industry's total assets, 93 percent of life insurance premiums, and 95 percent of annuity considerations. Many of our member companies offer and distribute fixed, index and variable annuities through affiliated and independent distributors. We respectfully submit this request to extend the comment period on proposed Rule 151A under the Securities Act of 1933 and proposed Rule 12h-1 under the Securities Exchange Act of 1934.¹

Proposed Rule 151A involves the status of indexed annuities under the federal securities laws, and proposed Rule 12h-1 involves relief from periodic reporting requirements for certain insurance and annuity contracts. The proposals were published June 25, 2008, and have a comment period that will expire on September 10, 2008, approximately 70 days after publication.²

The initiative is significant and complex. It reflects detailed interpretation of congressional intent, judicial decisions, and SEC administrative history. Proposed Rules 151A and 12h-1 would have a profound impact on insurance products and salespersons. The release spans nearly 100 pages and elicits responses to 100 individual, detailed questions. The proposals merit thorough analysis and constructive input.

The life insurance industry will provide thoughtful, responsive comment on the initiative. Our policy groups are unequivocal that the complexity and significance of the proposal warrant an extension of the comment period by at least 90 additional days and up to 120 days. It is critically important that the SEC allow thorough review and analysis necessary for thoughtful, complete input.³ An extended comment period will generate more valuable and informed commentary.

¹ See Indexed Annuities and Certain Other Insurance Contracts, Rel. Nos. 33-8933 and 34-58022 (June 25, 2008).

² The proposal appeared in the Federal Register on July 1, 2008. We note that the comment period occurs at the peak of the summer vacation period, and began shortly before the July 4 federal holiday and ends shortly after the Labor Day federal holiday.

³ Additionally, some companies would like to evaluate whether it makes sense to bifurcate proposed Rule 12h-1 from Proposed Rule 151.

Analytical and Factual Background

ACLI promptly circulated the initiative to its membership and convened an in-person meeting of its Securities Regulation Committee and its Annuities Committee. We have established three working groups that will address different aspects of the proposed rules and develop consensus positions for review and approval of the committees and a board-level steering committee. This process ensures broad, consensus-based policy development and provides meaningful, substantive regulatory feedback. It is, however, meticulous and time consuming.

Our groups preliminarily determined that the proposals will have a broad and complex reach beyond that principally discussed in the SEC's release. The important task of identifying and thoroughly analyzing the full implications of Rule 151A will require concentrated focus and time. We will need to evaluate legal, regulatory, structural and financial implications for annuity issuers. Moreover, each of these considerations must be analyzed for different life insurers based on product design, marketing practices, distribution arrangements and operational structures. Additionally, the proposal's impact on consumers and state laws must be carefully reviewed.

Industry groups like ACLI circulate regulatory proposals, elicit membership input, develop a consensus, and circulate draft letter of comment before submission. This worthwhile, but time intensive, process is difficult to execute in 70 days, particularly given the proposal's significance and complexity. The special time burdens confronting regulated industries and large organizations in digesting regulatory proposals were explicitly recognized by the Administrative Conference of the United States in its publication entitled *A Guide to Federal Agency Rulemaking*⁴ ("*Guide*"), which notes that:

[i]nterested persons often are large organizations, which may need time to coordinate an organizational response, or to authorize expenditure of funds to do the research needed to produce informed comments.⁵

The *Guide* reviews the legislative history of the Administrative Procedure Act (APA) and emphasizes that the notice of proposed rulemaking "must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument."⁶ The *Guide* further explains that rules developed through notice and comment procedures must be rational, and that notice and opportunity for comment under §553 of the APA should properly "give interested persons a chance to submit available information to an agency to enhance the agency's knowledge of the subject matter of the rulemaking."⁷ The *Guide* also points out that "informal rulemaking procedures should provide interested persons an opportunity to challenge the factual assumptions on which the agency is proceeding and to show in what respect such assumptions are erroneous."⁸ Our request for an extended comment period comports with these goals.

In 1997, the SEC invited comment on a concept release on equity index insurance products⁹, which elicited extensive scholarly comment.¹⁰ Eleven years later, the SEC published proposed Rule 151A in June 2008. In 2006, the SEC commenced a review of index annuity contracts, advertising, and complaints that had been voluntarily shared with the SEC upon request by ten of the larger index annuity

⁴ See, *A Guide to Federal Agency Rulemaking* (1983) at 124. The American Bar Association updated and republished this *Guide* in 1998. See Lubbers, *A Guide to Federal Agency Rulemaking*, Third Edition (1998), American Bar Association, Government and Public Lawyers Division and Section of Administrative Law and Regulatory Practice. Subsequent citations to the *Guide* are to the updated and revised ABA publication.

⁵ See *Guide* at 196.

⁶ Administrative Procedure Act: Legislative History, S. Doc. No.24879-258 (1946) [hereinafter legislative history of the APA].

⁷ See *Guide* at 197.

⁸ *Id.* at 182 and 196.

⁹ See Release No. 33-7438; File No. S7-22-97 (Aug. 20, 1997)

¹⁰ ACLI submitted a detailed submission on the concept release. See File No. S7-22-97.

writers. Between 2006 and the publication of the proposal, the SEC reviewed and analyzed the index annuity data. The SEC's thorough and deliberative approach on these matters underscores their complexity and significance. As the SEC took the time necessary to review, digest, and formulate its proposal, the industry should also reasonably spend the necessary time to digest, review and respond to the many detailed issues in the release.

Specific Needs Justifying an Extended Comment Period

Unlike some other commentators, ACLI's submission will reflect the views of 353 life insurance companies representing 95% of the annuities business. Our consensus-based position, therefore, will provide substantial, broad input for the SEC on this initiative. By the same token, however, the process of achieving consensus is more time consuming for a large organization representing wide, and possibly diverse, interests.¹¹ This task is further complicated because the proposal could conceivably affect all 353 of our members if it is adopted as proposed. In turn, many permutations exist for each company depending on product lines, sales force composition, and operational structure.

Several other factors also justify a substantially extended comment period. In addition to the substance of proposed Rule 151A and proposed Rule 12h-1, the release posits global questions that demand thorough analysis and informed response. For example, the release elicits comment on whether the scope of the proposed rule should be enlarged beyond indexed annuities to include other annuities, life insurance, or health insurance. Questions of this nearly unlimited nature require extensive review and formulation of policy. These questions alone warrant a reasonably extended comment period.

Similarly, the release invites comment on Paperwork Reduction Act issues about increased disclosure burdens associated with using existing Form S-1 to register products triggering Rule 151A. Separate from the many securities status issues in the initiative, the use of Form S-1 by annuity issuers will require meticulous, time-consuming scrutiny. Moreover, the release inquires whether better disclosure could be achieved through an amended version of Form N-4, the registration statement for variable annuity separate accounts organized as unit investment trusts under the Investment Company Act of 1940.

As a point of comparable reference, ACLI submitted a rulemaking petition to establish what became Form N-6 in 1993. Nine years later, the SEC adopted Form N-6.¹² Clearly, the proper development of appropriate insurance product disclosure is not a simple or unimportant task that can be executed in a speedy fashion. Most importantly, however, in the overall context of the initiative is the fundamental issue of what format provides the best, most-likely-to-be-read disclosure that promotes informed decision-making. This cannot be achieved in an unreasonably short comment period.

The release outlines a cost-benefit analysis of the initiative. We appreciate the opportunity to review and respond to these important, practical realities of the proposal. While the release identifies several potential costs to the proposal, a variety of others can be identified and analyzed. For example, Rule 151A would invoke substantial structural, operational, and expense considerations due to distributors' compliance with registered broker-dealer standards and FINRA requirements. It will take careful review to identify and calculate the costs and burdens of required broker-dealer distribution of index annuities and possibly other insurance products. Significant structural, system and operational changes will be required for companies without existing broker-dealer arrangements. Additionally, the release does not include the added expense of FINRA membership charges from enlarged monthly FOCUS reports that would include a new category of registered securities. Training, education, examination, and continuing

¹¹ This sentiment is drawn directly from the Guide text cited in footnote 4 *supra*.

¹² See Wilkerson, *The Administrative History of Variable Life Insurance Registration Form N-6: The Proposal's Purpose, Design and, Intent*, ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (2002) at 151 for a detailed discussion on the administrative history and logistics of designing a custom tailored registration form for variable life insurance.

education factors for newly registered salespersons must be estimated and balanced in any meaningful cost-benefit analysis.

It will take considerable time to evaluate and comment on the release's assessment about the scope of problems needing rectification, particularly under the standards of the SEC's Data Quality Assurance Guidelines.¹³ It is important to be able to properly identify the market conduct issues under examination in order for commentators to execute a fair cost-benefit analysis.

The complex investment risk mechanics of proposed Rule 151A demand careful review, particularly considering their potential exportation to products other than index annuities. This analysis cannot be achieved in a compressed timeframe. The exposure to external liability and litigation in applying the proposed methodology must also be evaluated as compliance and litigation risk considerations in commenting on the rule.

In responsibly formulating comment, our members are digesting the initiative to discern any unintended consequences that should be properly highlighted for the SEC's attention. This high-level conceptual review of all the proposal's features is essential, time consuming, and fundamental to any rulemaking analysis.

Life Industry Commitment to Responsible Conduct in the Annuity Marketplace

ACLI has actively and constructively participated in numerous SEC rulemaking initiatives over many years. We will likewise devote substantial resources and time in developing policy positions and providing constructive feedback. Our request for a comment extension will allow the most useful input on the SEC's important initiative. We fully understand the SEC's concerns about appropriate conduct in the marketplace, and note the release's repeated emphasis on suitability, supervision, and disclosure.

In a very related context, ACLI devoted substantial energy to proactively enhancing suitability, supervision, and disclosure in the distribution of annuities. ACLI's board-level CEO Task Force on Annuities established an active legislative and regulatory agenda to fulfill these goals, including:

- Our summary disclosure initiative¹⁴ for fixed, indexed and variable annuities that parallels the operating principles in the SEC's commendable endeavors concerning simplified mutual fund disclosure.
 - We shared the summary disclosure with the SEC staff for information and feedback.
 - We have worked with FINRA following its 2006 Annuity Roundtable to use this disclosure initiative to address directly some of the observations of the regulators who participated.
- Adoption in every jurisdiction of the NAIC Suitability in Annuity Transactions Model Regulation¹⁵ and the NAIC Annuity Disclosure Model Regulation¹⁶.
 - The Suitability in Annuity Transactions Model Regulation establishes annuity suitability and supervision standards drawn directly from FINRA rules on these issues.

¹³ See <http://www.sec.gov/about/dataqualityguide.htm>. These guidelines indicate that the SEC "takes pride in the quality of its information and is committed to disseminating information that meets the Commission's already rigorous standards for objectivity, integrity and utility." The release's identification of the scope of market conduct abuse appears to be derived from sources external to the SEC and should be open to reasonable scrutiny.

¹⁴ See NAIC Model Regulation Service II-275-1 (June 2006). See Wilkerson, *ACLI Disclosure Initiative for Fixed, Index, and Variable Annuities: Constructive Change on the Horizon*, ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (2007) at 217, for an extensive discussion on the purpose, background and substance of the ACLI summary disclosure initiative for annuities.

¹⁵ See Wilkerson, *Suitability and Supervision in the Distribution of Insurance Products: Multiple Moving Parts*, PLI-Understanding the Securities Products of Insurance Companies (2008) at 403 [discussion of NAIC Suitability in Annuity Transactions Model Regulation] and at 443 [discussion about NAIC Annuity Disclosure Model Regulation].

¹⁶ See NAIC Model Regulation Service II-275-1 (June 2006).

- We are working with the NAIC and state insurance commissioners, including state pilot programs, to have our summary disclosure initiative become a uniform approach to informed decision-making under the Annuity Disclosure Model Regulation
- Development of Suitability Monitoring Guidelines to implement supervisory obligations under the Suitability in Annuity Transactions Model Regulation.
 - These guidelines parallel SEC and FINRA exception reporting concepts used by broker-dealer in fulfilling enterprise-wide supervisory compliance.
- Development and support for the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.
 - In developing its recommendations for this NAIC model, ACLI coordinated with the North American Securities Administrators Association (NASAA) on its parallel initiative for state securities administrators.
 - The language of the NAIC and NASAA models are virtually identical.

Conclusion

Neither the APA¹⁷ nor the SEC's rules of conduct establish a "standard" period of comment on rulemakings. Rather, the goal of robust public comment on administrative rulemakings is best served by selecting a time period based on the unique factors and complexity of the individual initiative, and not "routine" practices. Some proposals should properly have longer comment periods than others.

In this instance, an extended comment period of 90-120 days will promote the most informed feedback given the size and diversity of ACLI's membership, as well as the profound complexity and importance of the issues under examination. The depth and quality of comment is simply a higher priority than the speed of completing the project.

For all of the reasons stated above, we respectfully request that the comment period be extended for the requested period. We greatly appreciate the courtesy of the staff in meeting with us on this subject, and of the Commission in evaluating our request. Please let me know if we can provide any additional background, or answer any questions that may develop.

Sincerely,



Carl B. Wilkerson.

Copy: Susan Nash, Associate Director, Division of Investment Management
Keith E. Carpenter, Senior Special Counsel, Division of Investment Management
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¹⁷ See Guide at 196.