

Indexed annuities should not be redefined and classified into a subset section under the Securities Act. From actuarial creation to end user implementation, fixed index annuities (FIA's) embrace the elements that define and characterize the fundamental nature of fixed annuities. Like traditional declared rate annuities, fixed index annuities provide a minimum crediting rate plus the opportunity to earn interest credits above and beyond that of the minimum rate. Like traditional declared rate annuities, fixed index annuities that have the potential for fluctuation of future gains AND protect the consumer against the risk of loss of premium. Segregating the index annuity concept negates this inherent design built into the index annuity concept. The 1997 review by the SEC resulting in "no-comment" reinforces that the Securities Act appropriately places index annuities in the category they were designed to be in. Further more, Supreme Court rulings including *Malone v. Addison Ins. Mktg. Inc.*, have upheld deferred indexed annuity contracts were not securities under both Section 3(a)(8) and Rule 151.

I oppose the adoption of the proposed definition or a modified definition that will target Fixed Index Annuities. There are several core areas of concern that the proposed ruling doesn't adequately take into consideration including;

- **Key features of Index Annuities make it an insurance product.**
- **The burden of the proposed rule would have a negative and unjustified economic and dampening competitive effect and a significant limiting effect of public offering.**
- **The proposed rule wouldn't necessarily lead to better consumer protection.**

Consumer protection is the most important responsibility in this industry. Adding regulatory jurisdiction would not increase this protection. The idea of full disclosure established by the Securities Act is not something that only occurs in securities transactions. The NAIC suitability model has been adopted and insurance carriers have implemented suitability requirements based upon this model. This model already provides the means for controlled and documented full disclosure and suitability review; registration would be redundant for this issue. What part of the NAIC suitability model does the SEC have objections to? LIMRA statistics show that less than 1/10 of 1% of index annuity have a complaint filed; the Advantage Compendium has determined that there is only 1 complaint for every \$109 million of index premium purchased. Furthermore, the NAIC Customer Information Source Report contends that only 3% of all complaints are a result of from the sales and marketing practices of insurance products. We strive for a 0% complaint ratio but these numbers are not grossly out of proportion to any service or product sold through *any* channel.

The core question of whether or not an insurance product falls under Safe Harbor Rule 151 is whether or not the insurer or the insured bears the investment risk. From my knowledge FIA's come to market as follows, the insured opens a contract with an insurance company, the insurance company applies the insured's funds to their general account, the general account is used to hedge a link to an index to determine excess

credit. At no point in that example where the insured actual has an investment risk as per the term of the Securities Act of 1933. The burden is solely on the general account assets of the insurance company and their ability to actuarially create a viable product. That being said, not only does the insurer bear investment risk in sense that has been the precedence for the last 75 years, the most common designs of FIA's repeat this bearer of protection on a yearly basis. Within the proposed ruling comments it states that individuals who purchase index annuities assume many of the same risk and rewards investors assume when investing their money in mutual funds, variable annuities and other securities. This is a blatantly false statement. The rationale for this statement is never explained. It is important that the record reflect the reality: all premiums (minus internal costs) are applied to general account assets. FIA's do not share the same risk reward as any of the above mentioned comparisons; in fact FIA's more similarly mirror many savings vehicles. FIA owners do not experience a loss in account value due to a negative market. From the DJIA high in October of 2007 to the current value there has been an approximate 20% DECREASE in value, none of the FIA products that I am aware would reflect a lesser account value from a previous statement value despite such a market decline. Why? It is contractually impossible; these are pure insurance programs. Once again, this proves that the insurer is bearing investment risk as it has been defined since 1933. As stated earlier, *Malone v. Addison Ins. Mktg. Inc.*, upheld deferred indexed annuity contracts were not securities under both Section 3(a)(8) and Rule 151. These rules look for a simple premise, "*who bears the investment risk.*" In this case and those similar it is very clear that the INSURER bears all of the investment risk and provides not only actuarial design features but minimum guarantees to safeguard clients. The fluctuation of index credit in an FIA is no different than that of traditional annuities based upon the performance of the company's overall performance. Somewhere along the line the insurance companies have general account assets positioned in registered investments, are we to assume that annuities, LTC, Health or Life insurance products created from these general account assets should be securities regulated as well?

The economic impact of the proposed ruling is huge. The proposed regulatory change will conflict with the Small Business Regulatory Enforcement Fairness Act of 1996. Within the act there is a litmus test of a major effect on the economy of \$100,000,000 or more. In order to adapt to such a drastic change in a ruling that hasn't been addressed since 1997 the economic impact would certainly surpass this measure. The traditional market distribution would become captive to broker dealers and by some estimates almost 100,000 licensed insurance agents would have to obtain securities registrations. The hard dollar economic outflow of registering 100,000 agents, staffing BD's and regulatory bodies to accommodate those would surpass the litmus test level. Plus, there are soft cost considerations. The Advantage Group of St. Louis estimates total cost to the FIA community to be in excess of \$852 million. Within the proposed ruling I am curious as to where the SEC stands on the idea of enhanced or conversely diminished competition. I find that within the doctrine there is a huge inconsistency on what the SEC proposes. On page 69 and 72, the SEC document attempts to state that one of the benefits of this proposed regulation is "enhanced competition." On page 75 and 79, the document reverses itself stating the cost as, "diminished competition." I feel the issue is not clear on this, if you diminish the distribution people that can bring a product to the

public and force the product to have extraneous expense for regulation you will have a diminished product. Index annuities have a cost for bearing all of the investment risk, bringing a product to market that completes this task AND follows regulations of a registered product would pass through the additional cost to the consumer, clearly diminishing the product viability and the external competition. It is evident that public offering of a product that provides a long-term savings with excess interest potential would be decreased as well. Such a radical proposal will turn the distribution channels upside down; you will have fewer providers, fewer purveyors and ultimately a lesser sales force. Something I find truly disturbing, if the proposed ruling seeks to turn a safe money concept like an index annuity into a speculative investment like a security... where are people supposed to put the money they cannot risk? Has the proposed amendment considered that nearly ¼ of all the FDIC bank closures in the past 8 years occurred in the last 9 months? The test of amounts payable under the contract are “more likely than not to exceed the amounts guaranteed under the contract” can be extrapolated to bank CD’s; something clearly outside of SEC jurisdiction per the Securities Act.