

2 July 2008

Subject: Comments on File No. S7-14-08  
Indexed Annuities and Certain Other Insurance Contracts

Dear SEC Commissioners,

Following your 3-0 ruling to make Indexed Annuities come under the authority of the SEC I have reviewed your 96 page findings document and conclude that either you do not understand the issues, or you are in collusion with ongoing and persistent NASD/ FINRA efforts to stop the flow of retirement money from leaving brokerage accounts and moving into indexed annuity contracts. I believe that your recommended regulations change seeks to stop the bleeding from lost brokerage accounts, is politically motivated and is conveniently timed to coincide with public concerns over regulation of our financial systems.

The basis for your recommendation appears to be to prevent “abusive sales practices”, yet such abuses are the exception, not the rule. If I compare the dollar value of continuing abuses by stock brokers, senior index annuity abuses are small by comparison. While there is no doubt that some “bad apples” do exist in the fixed annuities area and these people do unfairly take advantage of seniors, it is far from epidemic. In the few cases that I have heard of where a senior has inappropriately been sold an indexed annuity contract, the offending agent has been punished and the senior’s funds have been ultimately returned without penalty. As someone who meets with 5 – 10 seniors weekly, what I do see are systematic abuses by stock brokers who put seniors into inappropriate products where they lose savings they cannot afford to lose, and brokers who will not release funds in a timely manner, despite repeated client requests to do so. With huge regulation issues plaguing the people, products and services you already oversee, your proposal is akin to a fire marshal citing minor violations of a merchant, while several firehouses burn. I believe you need to get your own house in order, before making baseless rulings that favor your industry. Certainly misrepresentation by the brokerage arms of commercial banks soliciting banking customers who are seniors and moving them into risky market investments that they believe are safe is a much bigger problem that is ongoing.

It is well accepted that the retirement funds of seniors should be invested in less risky products as they age, leaning toward a higher percentage of fixed return products. In my practice I consistently meet with large numbers of seniors with limited funds whose brokers have them 85% to 95% invested in the market. This is simply wrong, yet this abuse continues to harm seniors and is accepted by your industry without a thought. If someone is 75 years old, market diversification offers limited protection when there is a market downturn, as the client may not have the time to recover from losses. The markets performance over the last 9 year is a perfect example of how these practices seriously affect seniors. Why aren’t you addressing this “real” issue.

For at the last 4 years, the NASD has mounted a campaign to convince that powers that be and the public that indexed annuities are securities products. This is completely self serving. They are products where principal cannot be lost and which have guaranteed minimum rates of return. The fact that higher than minimum returns can be realized if tied to an index is not relevant because they are still fixed products.

I have read claims that indexed annuity contracts are too complicated, yet by comparison, a mutual fund prospectus is more complex and it is the rare investor who actually reads a prospectus. I guarantee you that few brokers ever thoroughly discuss downside risk with their clients when they make a recommendation. Additionally, although brokers routinely cite past performance as a reason to enter into an investment, the repeated warnings in a prospectus that past performance is not an indicator of future gains is conveniently ignored.

Another other big claim with regard to indexed annuities is the issue of inappropriate surrender charges, which are routinely discussed and disclosed by agents as a part of every sale. The fact is that index annuities are not suitable for everyone, especially for someone with limited assets who needs checkbook-like liquidity. They are very however very appropriate for many, many retirees. Fixed indexed annuities are long term contracts and are most appropriate for people who only need to access their money at a limited rate or who are parking it in a safe place to leave as their legacy. It does not take the SEC to monitor this.

Your recommended ruling is baseless, political and self serving. Your time and money and the best interest of the public would be much better served by correcting real issues in your our house.

Thank you for the opportunity to share my opinion.

Richard E. Mellor