

From: "nobody@www.senate.gov" <nobody@www.senate.gov>
 Date: 8/22/2008 12:47:16 PM
 To: webmail@kyl-iq.senate.gov
 Subject: SEC Proposed Rule 151A

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<ISSUE>MISC</ISSUE>
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 <MSG>Dear Senator Kyl:

I am writing to ask for your help on a very important issue affecting Fixed Indexed Annuities (FIAs) and the insurance industry generally. I am a partner and Vice President of a national insurance marketing company located in your home state of Arizona. Forward Strategies is located in Tucson and we have been in business employing Tucsonans for the past five years. The SEC rule 151A mentioned above would have critical consequences for our employees, their families and the agents in Arizona and around the country with whom we work. With one simple stroke of a pen, Washington will eliminate jobs for hundreds of thousands of agents, tens of thousands of financial planners, hundreds of thousands of administrative personnel and the list goes on. Families would also be adversely affected by the sudden termination of all or most income. In one day, Washington D.C. would make an irreversible mistake affecting millions of people. I think you would agree that Washington is not in the business of firing people on a whim. I've been in the industry for over a decade and seen the good and bad. The bad is the agent taking advantage of clients, not the products (Fixed Indexed Annuities). This entire issue boils down to one simple fact: Securities firms are losing billions of dollars to the insurance industry's safe retirement savings vehicles and the firms want to keep control of the money by any means necessary.

Fixed indexed annuities are an increasingly popular retirement savings product offered by insurance companies to consumers who are interested in a safe and secure place for their money, especially during times of economic turmoil (like we are witnessing today). It is one of the fastest growing product categories offered by insurance companies and a critical component of many of my agents' clients' financial holdings. In fact, my parents hold multiple FIAs through various insurers and have saved them around 50% of their total savings. Had they not been in these

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savings vehicles and remained the securities they originally owned, my parents would have lost over 50% of their retirement savings due to decreases in the markets. At this point you should ask yourself a few questions:

1. Why were my parents, both approaching retirement and subsequently retired, "approved" to be in securities with their entire retirement nest egg?
2. Why did the securities firms' agents recommend and approve near retirement and retired individuals' retirement savings all at risk?
3. Why did the securities firms' principals approve having near retirement and retired individuals' retirement savings all at risk?
4. If they can't police themselves, why give them more products and decisions to police?

The Securities and Exchange Commission (SEC) has suddenly and arbitrarily come out with a rule proposal - known as SEC Rule 151A - that would significantly upset the regulation and offering of these products. In short, SEC Rule 151A attempts to reclassify FIAs as securities and thus subject them to a wide array of cumbersome securities laws and regulations, even though these products have been in the marketplace for over a decade and are closely regulated by state insurance commissioners. In addition, various reviews by securities individuals within governing bodies have declared FIAs a fixed vehicle, not a securities product that needs regulating.

This is an ill-conceived proposal that runs contrary to Congressional intent. It will:

- likely result in significant private sector costs running easily into the tens of millions of dollars
- cause disruption in the marketplace for both agents and consumers
- interfere with ongoing state insurance regulatory efforts
- add little if any protective value for customers

It is deeply troubling that a federal agency could come out with such a far-reaching proposal affecting millions of consumers and agents without providing for adequate justification or rationale.

Here are a few other important points to consider:

FIAs are well-designed products that give consumers guarantees, no loss of principal or credited gains, flexibility, and tax-deferral - just to name a few of their advantages. The recent downturn in the stock market highlights the very strength and value of FIAs. While millions of Americans suffered financial losses, FIA holders have not incurred losses in retirement savings because of the current market turmoil. This is the primary reason that I make these products available to my agents, clients, friends and parents.

FIA products are heavily regulated by state insurance departments. Through the National Association of Insurance Commissioners (NAIC), state regulators have been working earnestly 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.

Proposed Rule 151A is ill-conceived. Many securities lawyers find the SEC proposal to be 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, including the possible loss of principal due to market declines..

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 10. This means a proposal with profound effects on the insurance industry could become law within just a couple months even though the general public has had minimal opportunity to evaluate, comment, and possibly offer alternative approaches to address any valid concerns. Fair play demands that a proposal of this magnitude not be rushed or adopted hastily.

Finally, on a personal note, let me add that this is a critical issue for me and my customers. Throughout many years I have built an insurance business with fixed indexed products having been an important part of my business success. I have played by the rules and have strived to provide my clients with quality products and outstanding service. Within less than a year, the SEC's proposal/approval would shut down my business, my livelihood, and my clients' interests (not to mention hundreds of thousands of other agents, financial planners, etc.). FIAs are no more a securities product than traditional fixed annuities, term insurance, UL insurance, CD's and so forth. Almost every savings vehicle is tied to some sort of bond, which is a security. The SEC has very specific, plain English rules of what constitutes a security. The FIA (along with the aforementioned savings vehicles) does not satisfy the SEC's 2 pronged approach for declaring something a security.

I am asking for your help in urging the SEC to withdraw this ill-conceived proposal. At a minimum, I ask for your help in urging the SEC to slow down the adoption process so there can be adequate time for review of all implications and ramifications of this proposal. I would appreciate any help you could provide including contacting SEC Chairman Cox, the SEC Commissioners, and Members of the House Financial Services Committee.

Thank you for your time,

Steven Finley, CLU, ChFC
Vice President

Forward Strategies Insurance Brokerage, LLC</MSG>