

# Coalition for Indexed Products

August 19, 2008

## VIA E-MAIL

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

**Re: Request for Extension of Time to  
Comment on Proposed Rule 151A  
Release Number 33-8933 (File Number S7-14-08)**

Dear Ms. Harmon:

On behalf of the Coalition for Indexed Products (the "Coalition"),<sup>1</sup> we are submitting this letter in connection with Proposed Rule 151A under the Securities Act of 1933 (the "Proposed Rule").<sup>2</sup> The Proposed Rule, if adopted, would operate to exclude certain fixed indexed and other annuity contracts from the exclusion provided by Section 3(a)(8) of the Securities Act of 1933, thereby requiring registration of such contracts with the Commission. The comment period for the Proposed Rule currently expires on September 10, 2008. For the reasons stated below, the Coalition respectfully requests that the Commission extend the comment period by at least 90 days for the Proposed Rule, until December 9, 2008.

The Coalition respectfully submits that it is imperative that the Commission afford additional time for the annuity industry, as a whole, and its members, in particular, to carefully analyze and comment on the issues raised by the Proposed Rule, which, if adopted, will have far-reaching consequences on issuers of fixed indexed annuities and other insurance products. To date, members of the Coalition have analyzed the securities

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<sup>1</sup> The Coalition is currently comprised of 8 insurance company systems and their subsidiaries that issue fixed indexed annuities. Its members include Allianz Life Insurance Company of North America, American Equity Investment Life Insurance Company, American Investors Life Insurance Company (an Aviva USA Corporation company), Aviva Life and Annuity Company, Aviva Life and Annuity Company of New York, Conesco Insurance Company, EquiTrust Life Insurance Company, Life Insurance Company of the Southwest (a National Life Group company), Midland National Life Insurance Company, North American Company for Life and Health Insurance, OM Financial Life Insurance Company (an Old Mutual company), and OM Financial Life Insurance Company of New York, which comprise most of the top fixed indexed annuity issuers and represent approximately \$17.5 billion of fixed indexed annuity sales made during 2007.

<sup>2</sup> See *Indexed Annuities and Certain Other Insurance Contracts*, Rel. No. 33-8933 (June 25, 2008), File No. S7-14-08 (the "Proposing Release").

status of their fixed indexed annuities pursuant to long-standing Supreme Court and other judicial precedent and with regard to prior Commission positions (including the long inactive concept release on fixed indexed annuities published over a decade ago).<sup>3</sup> Requiring the registration of fixed insurance products that have historically been subject only to state insurance regulation will have a significant and drastic impact on the manner in which insurance companies develop, market, and sell these products, assuming they can continue to do so if proposed Rule 151A is adopted.

At this time, the members of the Coalition have already come together on several occasions to begin developing their thoughts, reactions, and comments on the Proposed Rule. One thing that has become clear is that an informed, thorough, and meaningful comment letter that responds not only to the issues raised in the Proposing Release but also addresses additional concerns that the Coalition has begun to identify will take time. The Coalition believes that it is in the best interests of purchasers of annuities and only fair to the annuity industry for the Commission to be fully informed, prior to the Proposed Rule's adoption, of the comprehensive and sweeping impact of the Proposed Rule (the complexity of which is evident by the nearly 100 questions posed for comment in the Proposing Release). This cannot effectively be accomplished within the 77-day comment period provided by the Commission, particularly given that the comment period coincides with the summer months during which coordination among Coalition participants is proving especially difficult. As the Commission notes in its Proposing Release, the insurance products to be regulated by the Proposed Rule have been on the market since at least the mid-1990s; there is no new and sudden contingency that requires action by the Commission in September rather than 3 months later, whereas allowing a reasonable additional period for comment will help ensure that the Commission has the highest possible caliber of information before it as it makes a regulatory decision that will have significant, long-lasting effects.

To address all of the ramifications the Proposed Rule will have on Coalition members and other interested parties, the Coalition will need to consult with legal counsel, actuaries, senior management, independent marketing organizations, insurance agents and state regulators. Such discussions have already begun but will take time to complete. The Coalition also will need to consider the effect the Proposed Rule will have on the portfolios of insurance products issued by its members, which may vary in terms of the features they offer and the guarantees they provide. A high level of attention also will need to be given to the impact the Proposed Rule will have on Coalition members' business, legal, and compliance operations, marketing efforts, distribution channels, and consumers.

Allowing sufficient time to comment will ensure that any reclassification of fixed indexed annuities and/or other insurance products as securities is effected only after the annuity industry has been provided with the necessary amount of time to articulate its

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<sup>3</sup> See *Equity Index Insurance Products*, Release No. 33-7438, [1997 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 85,957 (Aug. 20, 1997).

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concerns and the Commission has been furnished with the comprehensive information it needs to consider before proceeding with such an important initiative as the adoption of the Proposed Rule.

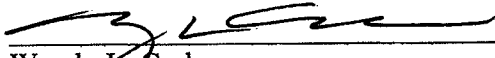
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We greatly appreciate your attention to our request. If you have any questions or if additional information would be helpful, please contact Wendy Carlson at (515)-457-1824, or Eric Marhoun at (410)-895-0082.

Respectfully Submitted,

THE COALITION OF FIXED INDEXED ANNUITY WRITERS

By: American Equity Investment Life Insurance Company



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Wendy L. Carlson  
General Counsel and Chief Financial Officer

By: OM Financial Life Insurance Company



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Eric Marhoun  
Senior Vice President, General Counsel & Secretary

cc: Chairman Christopher Cox  
Commissioner Kathleen L. Casey  
Commissioner Elisse B. Walter  
Commissioner Luis A. Aguilar  
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