

# Public Investors Arbitration Bar Association

September 10, 2008

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## VIA E-MAIL TO RULE-COMMENTS@SEC.GOV

Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re:** File No. S7-14-08  
Proposed Rule Change Regarding Indexed Annuities and Certain  
Other Insurance Contracts

Dear Ms. Harmon:

The Public Investors Arbitration Bar Association (“PIABA”) appreciates the opportunity to express its support for the above-referenced rule proposal which would bring indexed annuities within the ambit of the federal securities laws.

PIABA is a bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums.

While we do not comment on the definitional elements, areas of requested guidance, or other technical elements of the rule, PIABA believes it is important to state our position concerning the regulation of indexed annuities as securities.

PIABA supports this rule proposal because on its face it is in the best interest of investors. Throughout the nation, senior citizens have fallen prey to false and misleading marketing tactics by insurance professionals who, although they are selling investments, are neither licensed nor regulated under state or federal securities laws. These senior citizens are the most vulnerable segment of our society, and it is essential that they are protected by securities laws.

Indexed annuities are securities. These products are in fact investments and are actively marketed as investments. As such, their sale should be subjected to the same standards and regulations applied to the sales of other investments, including the basic investor protection provisions of the anti-fraud statutes and suitability rules. Many state insurance laws do not

provide investors a cause of action against insurance agents for misleading and defrauding their clients. This is in contrast to the federal securities laws and state blue sky laws which allow investors to recover against the seller of a security for the wrongdoing.

The imposition of statutory liability on insurance agents selling indexed annuities as investments is particularly important where the investment decision directly impacts an investor's financial security and ability to retire.

Indexed annuities also qualify as securities under traditional legal analysis. While most such annuities provide a minimum return guarantee, the guarantee is limited to only a portion of the customer's investment, and the primary success of an indexed annuity investment is dependent upon the performance of stock indices. As such, indexed annuities subject investors to the investment risk of both the issuing insurance company and the stock market.

Another important reason for including indexed annuities within the definition of securities is that indexed annuities are aggressively marketed with limited disclosures to investors who are unable to understand these confusing products. Full disclosure mandated by securities laws, and regulation and oversight by both the SEC and FINRA, are therefore particularly appropriate.

A review of the existing comment letters indicates that hundreds of insurance professionals have been mobilized by their professional organizations to oppose this rule proposal. This is not surprising in view of the indexed annuity commission structure. These products generate some of the highest sales commissions of any products on the market, including both securities and insurance products.

We note that FINRA shares many of our concerns. In Notice to Members 05-50, FINRA pointed out that indexed annuities are often marketed as investments. FINRA questioned the marketing practices of its members with regard to indexed annuities and the lack of supervision of those sales practices. If the proposed rule is adopted, FINRA will impose its suitability and supervisory obligations upon the sellers of indexed annuities. We believe these regulatory protections are essential to investors.

Florence E. Harmon, Acting Secretary  
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We urge the Commission to adopt the rule and take this important step toward protecting millions of American investors from deceptive and unsuitable sales of indexed annuities.

Respectfully,

PUBLIC INVESTORS ARBITRATION  
BAR ASSOCIATION

*s/Laurence S. Schultz*  
Laurence S. Schultz  
President, 2007-2008

LSS/ch

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