



November 17, 2008

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

RE: File No. S7-14-08 (Indexed Annuities)

Dear Ms. Harmon:

NAVA, Inc., the Association for Insured Retirement Solutions, respectfully submits this further letter of comment on the Commission's proposed new rules that would define the terms "annuity contract" and "optional annuity contract" under the Securities Act of 1933 (the "Securities Act"), and exempt insurance companies from filing reports under the Securities Exchange Act of 1934 (the "Exchange Act") under certain circumstances, published by the Securities and Exchange Commission ("SEC") on June 25, 2008.¹

NAVA is a not-for-profit organization dedicated to the growth and understanding of annuity and variable life insurance products. NAVA represents all segments of the annuity and variable life industry with over 300 member organizations, including insurance companies, banks, investment management firms, distribution firms, and industry service providers.

As we noted in our previous letter on September 10, 2008, the short comment period, the timing of the Release over the summer, and the diverse product mix of our members made it exceedingly difficult to properly analyze the complex issues raised by the proposal and attempt to reach the kind of broad consensus that would allow NAVA to take a position on the registration of indexed annuities as securities. The SEC declined to extend the comment period despite numerous requests that it do so. On October 17, 2008, the SEC published a notice in the Federal Register stating that it was reopening the period for public comment on the proposal, but only for an additional thirty days.² The short additional time granted by the SEC is again insufficient for NAVA to be able to

¹ *Indexed Annuities and Other Insurance Contracts*, Securities Act Release No. 8933 (June 25, 2008) (the "Release").

² Federal Register/Vol. 73, No. 202/Friday, October 17, 2008.

offer comments on whether or not indexed annuities should be covered by Section 3(a)(8) of the Securities Act.

We would like to take this opportunity to offer some additional comments to those that we offered in our September 10 letter on two other points.

A. Compliance Date for Rule 151A

The Release proposed that the effective date for any final rule that may be adopted would be 12 months after publication in the Federal Register.³ In our prior letter, we suggested that a longer phase-in period was warranted and that the compliance date of the Rule not be earlier than 18 months after publication in the Federal Register.

Our members have given further consideration to the likely impacts of a rule requiring registration of indexed annuities and now strongly believe that additional time will be needed. Accordingly, we urge that the effective date be 24 months from the date of publication in the Federal Register.

Adoption of Rule 151A will necessitate extensive and time consuming efforts by both insurers and distributors. First, as recognized by the Release, the industry will need sufficient time to conduct the analysis required by the proposed new definitional rule and comply with any applicable requirements under the federal securities laws. We observe that the test set out in the proposed rule is completely new, and companies will need time to determine how to perform the required analysis, which the proposed rule envisions will include economic, actuarial and other assumptions.

Next, for any products that are determined by insurers to fall within the new definition, registration statements and prospectuses will have to be prepared. Some insurance companies that issue indexed annuities may not presently issue products that have required registration so preparation of statements and prospectuses may be particularly time consuming for them.

In addition, staff review and approval of the registration statements may also prove time consuming. The Release estimates that 400 indexed annuity contracts would be registered on Form S-1 each year⁴ and will have to be reviewed by staff in addition to all of the other registration statements for other registered products. This would appear to be a significant increase in the staff's workload and could cause delays in the review process, particularly because the staff will be required to review registration statements for products that, with few exceptions, have not previously been registered with the SEC.

Finally, as noted in the Release, indexed annuities that are determined to require registration will have to be distributed only through registered broker-dealers. This is not

³ Proposing Release at 45.

⁴ Proposing Release at 80.

how the overwhelming majority of indexed annuities have traditionally been distributed. According to the Advantage Group, approximately 89% of indexed annuity sales during the first quarter of 2008 were sold by independent agents, with only approximately 1% being sold by broker-dealers. Accordingly, we believe that changing over to a broker-dealer distribution model will be a major undertaking for companies that issue indexed annuities, necessitating significant changes to their business models and systems.

B. Proposed Rule 12h-7

Proposed new rule 12h-7 under the Exchange Act would provide conditional relief from the periodic reporting requirements of the Exchange Act for insurance companies issuing indexed annuities and certain other securities that are registered under the Securities Act and regulated as insurance under state law. We previously noted our support for the prompt adoption of the rule, regardless of Commission action on Rule 151A.

NAVA respectfully requests that the SEC separate its consideration of proposed rule 151A and 12h-7 and move forward with adoption of Rule 12h-7 as expeditiously as possible. Proposed Rule 151A raises complicated legal and policy issues and has generated more than 4,000 comments on both sides of the issue. As a result, it will likely take the SEC considerable time to review the comments and analyze the legal arguments and other issues raised by commenters. On the other hand, the response to proposed Rule 12h-7 was uniformly positive and the concerns that were raised should be more easily addressed.

The SEC recognized in the Release that “the exemption is necessary or appropriate in the public interest and consistent with the protection of investors,”⁵ and, accordingly, we see no reason why its consideration and adoption should be delayed. Adoption of Rule 12h-7 would eliminate duplicative and burdensome reporting presently required by the Exchange Act and result in significant cost savings. Moreover, the two rule proposals are not linked or dependent upon each other in any way so as to require that they be addressed at the same time.

We would like to reiterate the comments made in our prior letter regarding paragraph (e) of proposed Rule 12h-7, which requires that the issuer impose certain restrictions on the rights of contract owners to transfer or assign their contracts, including reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis. As we noted, we believe this provision may conflict with some state insurance laws and regulations, or be the basis for objections to annuity contract filings during the state insurance department’s product approval process.

Accordingly, we respectfully urge the Commission to coordinate with state insurance departments to address any conflict that might preclude compliance with the condition or delete this provision altogether.

⁵ Proposing Release at 47.

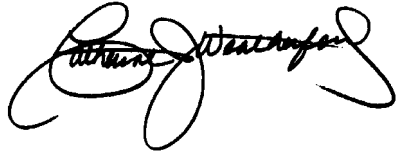
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Again, we appreciate the opportunity to comment. If we can answer any questions or be of further assistance, please contact Michael DeGeorge, General Counsel, at (703) 707-8830, extension 20, or Richard Choi of Jordan Burt LLP at (202) 965-8127. Mr. Choi is co-chair of NAVA's Regulatory Affairs Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Weatherford". The signature is stylized with large, flowing loops and a long horizontal stroke at the end.

Catherine Weatherford
President & CEO