

On December 17, 2008, at the same time that the Securities and Exchange Commission approved the adoption of new Rule 151A regarding indexed annuities, it also approved adoption of new Rule 12h-7 under the Securities Exchange Act of 1934 which provides insurance companies with an exemption from Exchange Act reporting with respect to indexed annuities and certain other securities that are registered under the Securities Act and regulated as insurance under state law.

The Release containing new Rule 12h-7 is posted on the SEC Web site at <http://www.sec.gov/rules/final/2009/33-8996.pdf>.

The basis for the rule is the fact that the income and assets of insurance companies are regulated under state insurance laws and thus additional Exchange Act reporting is unnecessary. The SEC also cites the absence of trading interest in the securities covered by the rule.

The exemption is available to an issuer that is subject to the supervision of the insurance commissioner, bank commissioner or similar agency of any state or territory of the U.S. or the District of Columbia.

The exemption applies to the securities that are registered under the Securities Act and therefore applies to indexed annuities, contracts with market value adjustment (MVA) features, variable annuities and variable life insurance. However, in the case of variable annuities and variable life, the exemption applies only to the insurance company issuing the contract and not to the separate account into which the purchaser's payments are invested, since the separate account is registered as an investment company under the Investment Company Act of 1940 and is not regulated as an insurance company under state law.

The exemption also applies to registered insurance contracts that provide certain guaranteed benefits in connection with assets held in an investor's account, such as a mutual fund, brokerage, or investment advisory account.

The exemption is available for both existing types of insurance contracts and contracts developed in the future that are required to be registered under the Securities Act. If an insurer issues any securities for which the exemption does not apply, the insurer will remain subject to Exchange Act reporting requirements. Thus, for example, an insurer that is a publicly held company would still have to file Exchange Act reports.

The Rule has the following conditions:

- (a) The issuer is a corporation subject to the supervision of the insurance commissioner, bank commissioner or agency performing like functions;
- (b) The securities do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary State of the issuer or are guarantees of securities that are subject to regulation;
- (c) The issuer files an annual statement of its financial condition with, and is supervised, and its financial condition examined periodically by, the insurance commissioner, bank commissioner or other agency;
- (d) The securities are not listed, traded, or quoted on an exchange;

- (e) The issuer takes steps reasonably designed to ensure that a trading market for the securities does not develop, including, except to the extent prohibited by state law or action of a state regulator, requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers;
- (f) The prospectus for the securities contains a statement indicating that the issuer is relying on the exemption.

The fifth condition was modified as a result of comments filed by NAVA and others which submitted that some states do not permit insurers to impose restrictions on assignments or transfers or specifically grant contract owners the right to assign or transfer their contracts.

The last condition is also new and is intended to clarify that reliance on the exemption is optional since some insurers may conclude that the benefits of being able to incorporate by reference Exchange Act reports may outweigh the costs associated with filing the reports. An insurer who does not include this statement in the prospectus will remain subject to mandatory Exchange Act reporting.

The effective date of the rule is May 1, 2009.