



FIELD MEMO

July 25, 2008

Midland National's Statement on SEC's Proposed Rule 151A

In an open meeting on June 25, 2008, under the leadership of Chairman Cox, the US Securities and Exchange Commission (SEC) presented **Proposed Rule 151A** under the Securities Act of 1993 that would effectively define all fixed index annuities as securities, not insurance products. The SEC published *proposed* rule 151A on June 26, 2008.

What are the next steps in the rule making process?

1. The SEC has published the proposed rule for written comments.
2. Interested parties have until September 10, 2008 to review the proposed rule and submit suggestions, comment/remarks and proposals to change the rule or encourage the SEC not to adopt the proposed rule.
3. Following the comment period—post September 10, 2008—the SEC may modify the rule or adopt the proposed rule in its original form or choose to not adopt the proposed rule.
4. If adopted:
 - a. Companies issuing fixed index annuities would be required to comply with the registration requirements for many other forms of securities within one year following the formal adoption.
 - b. The proposed rule would ***apply only on a prospective basis*** to contracts issued after the effective date of rule. This means that contracts issued prior to this effective date will not be subject to this rule.

What is Midland National's response?

Midland National continues to fully support efforts that promote and ensure that fixed index annuities are marketed and sold with proper disclosures and in conformance with all suitability guidelines and requirements. However, Midland National strongly believes that fixed index annuities are not securities and should not be regulated by the SEC. *The Company fully supports the current regulation of these products by the insurance departments of each state.*

What are Midland National's next steps?

The following action steps will take place immediately:

1. Midland National has joined other interested insurance companies to oppose the adoption of the proposed rule and work together to develop strategies to that end.
2. Midland National will submit its own written comments opposing proposed rule 151A.
3. Midland National will encourage our agents to become actively involved in a lobbying campaign to oppose this proposed rule.
4. Midland National will also work with various trade groups to further the goal of defeating the adoption of this proposed rule.



While this proposed rule is pending, our fixed index annuities will continue to be offered and it is business as usual. These products continue to be regulated by the state insurance departments. State insurance obligations continue to apply to all licensed agents, including those who hold a current securities license.

Midland National will be well-positioned to offer agents and clients competitive and suitable annuities, regardless of the outcome of Proposed Rule 151A.

What action can I take as an agent?

Even though the SEC is an independent government agency that can adopt rules without Congressional approval, Congress has considerable influence with the SEC. The Company needs for Congress to express its deep concerns over both the substance of this proposal and hasty manner in which it was formed. Making Senators and Representatives aware and asking them specifically to contact SEC Chairman Christopher Cox, the SEC Commissioners, as well as the Chairpersons and members of the Senate Banking and House Financial Services Committees (as applicable) to express their concerns. For information on contacting local Congressman/woman and state Senators, go to:

House—[http://www.house.gov/house/MemberWWW by State.shtml](http://www.house.gov/house/MemberWWW%20by%20State.shtml)

Senate—<http://www.senate.gov/general/contactinformation/senators.cfm>

Asking United States Senators (every state has two elected at large) and Congressional Representatives for help in protecting livelihoods and maintaining the availability of an insurance product that provides valuable guarantees to consumers. It is critical to request Senators/ Representatives to do whatever it takes to stop this draft regulation from becoming law—or at least allow more time for closer review.

Please find below some talking points to use in expressing concerns/views:

- Fixed Indexed Annuities (FIAs) are excellent products that give consumer guarantees, flexibility, tax-deferral and many other advantages. While FIAs are not for everyone, sales of these innovative products have soared in recent years because they give consumers a unique combination of guaranteed protection and opportunity for higher accumulation than traditional fixed annuities.
- The SEC's draft regulation (Rule 151A) adds an unnecessary layer of securities regulation to this insurance product. Rule 151A would turn most FIA products—as well as some non-indexed fixed annuities—into securities. This will have far-reaching consequences by disrupting the manner in which these products are sold today. Thus, causing confusion over the differences between insurance versus securities and providing little additional consumer protection at tremendous cost to companies, agents and ultimately clients.
- Proposed Rule 151A is ill-conceived. Many securities lawyers find the SEC proposal to be confusing and completely unsupported by judicial precedents on what makes 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 which the investor bears the risk for market losses. Many observers think the SEC's proposed regulation—if adopted—is a slippery slope towards reclassifying many other annuity products as securities. This seems at odds with the Congressional intent.

- FIA products are heavily regulated by state insurance departments. Through the NAIC, state regulators have worked hard 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.
- Criticisms of FIAs have been exaggerated and market abuses have been largely corrected. The SEC—along with other critics—have focused on abuses in the marketing of these products. Needless to say, there are abuses in the marketing of all financial products, including many that are already regulated by the SEC. The fact is the FIA market has grown rapidly because there is a demand for these products and generally consumers have been pleased with the results. While there have been some inappropriate sales (as with any innovative product) those concerns have been largely addressed by new regulations and the evolution of FIAs (e.g. lower surrender charges, shorter surrender periods). FIA products and the FIA marketplace will continue to evolve to meet consumer needs despite efforts by critics to paint the entire industry with one brush.
- The recent downturn in the stock market highlights the value of FIAs. While millions of Americans suffered financial losses as a result of a twenty percent plunge in the stock market, FIA-holders have not lost a penny in retirement savings because of market turmoil. FIA-holders have peace of mind that market fluctuations do not adversely affect their account values.
- The SEC proposal has not been appropriately vetted for comment—and appears to be rushed for adoption. With virtually no forewarning, the SEC unveiled this proposal on June 25 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 of months even though agents and insurers have had minimal opportunity to evaluate, comment and possibly offer alternative approaches to address any valid concerns. This sudden action comes ten years after the SEC first identified issues left dormant as the FIA market grew and evolved. Fair play demands that a proposal of this magnitude not be rushed or adopted hastily.

These talking points should help in articulating concerns about the SEC proposal. Obviously a more personal message—own words, stories and examples to illustrate key points—will have a stronger impact on elected officials. Those experiencing difficulties in contacting Senators or Representatives, should contact legislative chiefs of staff or other high level staff persons.



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