



9800 Fredericksburg Road
San Antonio, Texas 78288

September 10, 2008

VIA ELECTRONIC DELIVERY

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

***Re: Comments on Proposed Rule 151A
 Indexed Annuities and Certain Other Insurance Contracts
 File Number S7-14-08; Release No. 33-8933***

Dear Ms. Harmon:

USAA Life Insurance Company (USAA Life) appreciates the opportunity to provide its comments in response to the request by the Securities and Exchange Commission (Commission) in Release No. 33-8933 for comments on proposed rule 151A that would exclude certain annuity contracts under state insurance law from being categorized as an “annuity contract” or “optional annuity contract” under Section 3(a)(8) of the Securities Act of 1933 (1933 Act), thereby subjecting them to securities regulation.

United Services Automobile Association (USAA) is a member-owned association that seeks to facilitate the financial security of its members and their families by providing a full range of highly competitive financial products and services, including insurance, banking and investment products. USAA Life is a wholly-owned subsidiary of USAA. It offers life insurance, annuities and health insurance products to USAA’s members and the general public in all states (except New York)¹ and the District of Columbia.

USAA Life acknowledges the Commission’s desire to protect consumers by clarifying the status of indexed annuities in light of sales abuses that have occurred with respect to the product. With respect to this matter, we support the comments submitted to you by the Committee of Annuity Insurers (of which we are a member) regarding the broad scope of the proposed rule beyond annuities that are not indexed annuities. Our comments today offer a specific example of how non-indexed annuity contracts can be captured within that scope, which we believe is unwarranted. We strongly believe the proposed solution affects much more than the problem it seeks to address, and therefore, should not be adopted as drafted.

¹ USAA Life’s subsidiary USAA Life Insurance Company of New York offers life insurance and annuity products in the state of New York.

USAA Life sells several annuity products including fixed deferred annuities and fixed immediate annuities. We do not offer indexed annuities or variable annuities². With respect to our fixed annuity products, we presently rely upon the Section 3(a)(8) exemption and the Rule 151 safe harbor for annuities. Proposed rule 151A would define a class of annuity that would *not* be able to rely on the exclusion for annuity or optional annuity contracts in Section 3(a)(8) of the 1933 Act. Annuities that meet this definition would be required to be registered as securities. An annuity would be subject to registration if (1) amounts payable by the issuer under the contract are calculated, in whole or in part, by reference to the performance of a security, including a group or index of securities; and (2) amounts payable by the issuer under the contract are more likely than not to exceed the amounts guaranteed under the contract. Variable annuities are the only type of annuities that have been expressly exempted from the proposed rule. We recommend that fixed immediate annuities be expressly exempted as well for different reasons.

Immediate annuities are the most simple form of annuity contract. The customer pays a single premium to the insurance company and in return, the insurance company agrees to pay a scheduled series of payments to the customer for the life of the annuitant and/or for a fixed period of time. With immediate annuities, there is no accumulation phase where interest is being earned on the premium paid. Instead, payments usually start soon after the contract is issued. Under proposed rule 151A, however, a fixed immediate annuity contract could, without any further analysis, be deemed “not an annuity” for 1933 Act purposes if it meets the 2-prong test in proposed rule 151A. We oppose a rule that would cause such a result for an immediate annuity.

According to the Supreme Court and the Commission itself, various factors should be considered to determine whether an annuity is a security. The Supreme Court has previously interpreted Section 3(a)(8) of the 1933 Act by analyzing whether the insurance company assumed the investment risk associated with the annuity. With respect to immediate annuities, the investment risk is borne solely by the insurance company and not by the contract holder. In addition, immediate annuities are not primarily marketed as an investment, which is a factor considered in the safe harbor of Rule 151. Instead, the product is usually marketed primarily as a means by which to provide guaranteed income during retirement. Finally, judicial interpretations of Section 3(a)(8) and the Commission have made it clear that a company’s assumption of mortality risk is also relevant to an analysis under Section 3(a)(8). Mortality risk is usually reflected within the pricing for immediate annuities.

The Commission’s proposed rule fails to consider these factors to determine whether an annuity is a security. This leads to a result whereby immediate annuity contracts that have been long held to be excluded from being considered a security are now being potentially re-characterized as securities without appropriate analysis. We know and appreciate that the Commission is greatly concerned about abusive sales practices that have occurred with respect to the sale of indexed annuities and that this

² USAA Life offered variable annuities for sale until 2006.

concern has, in part, been the impetus for the proposed rule. We are, however, unaware of similar types of sales abuses occurring with respect to the sale of immediate annuities. This is due largely to the fact that the terms of the contract are straightforward. The customer understands the payments he will be receiving, and therefore few complaints have emerged.

In summary, we encourage the Commission to narrow the scope of proposed rule 151A so that it does not apply to immediate annuities. The public is protected by the current regulatory structure which deems immediate annuities as insurance products and not securities, and it should remain that way. To the extent the Commission decides to continue to include immediate annuities within the scope of proposed rule 151A, then we urge the Commission to exclude from the rule's scope annuity contracts where payments are calculated by reference to a "security" that today is exempt from the 1933 Act as specifically set forth in Section 3(a)(2), such as U.S. Treasury issues. The proposed rule should not encompass references to securities that are exempt under the 1933 Act.

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We appreciate the opportunity to provide comments on this proposal. If you have any questions regarding our comments, or would like additional information, please contact me at (210) 498-8696.

Sincerely,

Mark S. Howard
Senior Vice President, Secretary and Counsel
USAA Life Insurance Company