NASAA

CFA Consumer Federation of America

May 14, 2010

Opposition to Harkin/Johanns/Leahy Amendment #3920

Dear Senator:

We are writing to oppose the Harkin/Johanns/Leahy amendment, which deprives investors in indexed annuities of the strong protections afforded by our nation's securities laws. Indexed annuities are securities, and they are heavily marketed as such. All too often, deceptive sales practices have been used to promote these complicated investment products. As a result, investors – and senior citizens in particular – can fall prey to unsuitable sales. Accordingly, it is vitally important that indexed annuities be regulated as securities and subjected to the strong disclosure, suitability, and sales practice standards afforded by our nation's securities laws.

To ensure that investors receive these protections, the Securities and Exchange Commission ("SEC") adopted Rule 151A, which would subject indexed annuities to regulation as securities. The United States Court of Appeals for the District of Columbia Circuit upheld the legal foundation for Rule 151A. Although remanding with respect to certain procedural requirements, the court upheld the rule on substantive legal grounds, finding it was reasonable for the SEC to conclude that indexed annuities should be subject to federal securities regulation.

Attempts to disparage the SEC's rule as a federal attack on state regulation are unfounded. Critics who level that charge ignore the fact that the rule will NOT interfere with the authority of state insurance commissioners to continue regulating indexed annuities and the companies that issue them. In fact, in order to be covered by the rule, a contract must be subject to regulation as an annuity under state insurance law.

Nor will the rule impose unreasonable burdens on industry. It will simply require compliance with essentially the same regulatory standards that for 75 years have applied to all companies that issue securities. Moreover, the rule is strictly prospective, applying only to indexed annuities issued *after* the effective date, and it does not take effect for two years, affording the industry ample time to prepare for compliance. In short, the rule will provide much needed protections for investors without unfairly burdening industry.

Indexed annuities are hybrid products that supposedly offer investors the combined advantages of guaranteed minimum returns along with profits from stock market gains. Although indexed annuities may be legitimate vehicles for some people, they have many features, including high costs, significant risks, and long surrender periods, that make these products unsuitable for many investors. Investors have a difficult time understanding these hazards because indexed annuities are hopelessly complex. Compounding the problem are the generous commissions that agents can earn from the sale of these products.

The problems associated with the marketing of indexed annuities are a matter of record in countless news articles, government warnings, regulatory enforcement actions, and lawsuits filed by innumerable investors seeking damages for the unsuitable and fraudulent sale of indexed annuities. Indeed, these products have become so infamous that they were featured in a prime time Dateline NBC report entitled "Tricks of the Trade."

Without question, the single most effective way to address abuses in the sale of indexed annuities is to regulate them as securities. This is legally appropriate because indexed annuities shift a significant degree of investment risk to purchasers, and therefore pose the very dangers that the federal securities laws were intended to address. Licensing standards under the securities laws will help ensure that agents have the requisite knowledge and character to sell these complex investment products. Under the securities laws, those agents will also be subject to strong supervision requirements. Mandatory registration of indexed annuities as securities will vastly increase the amount of information available to investors concerning the terms, risks, and costs of these offerings. Perhaps most important, the strong antifraud provisions and suitability standards that have been a part of securities regulation for decades will deter abuses in the sale of indexed annuities and provide more effective remedies for those who are victimized.

Regulating indexed annuities as securities under federal law is long overdue and vitally important for our nation's investors. The SEC's Rule 151A on indexed annuities accomplishes this goal in a thoughtful and reasonable fashion, and it should be allowed to take effect. The Harkin/Johanns/Leahy amendment would reverse this important regulatory initiative and should not be adopted.

Respectfully submitted,

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