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United States Government Accountability Office
Washington, DC 20548

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January 30, 2009

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Indexed Annuities And Certain Other Insurance Contracts*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled “Indexed Annuities And Certain Other Insurance Contracts” (RIN: 3235-AK16). We received the rule on January 9, 2009. It was published in the *Federal Register* as a final rule on January 16, 2009. 73 Fed. Reg. 3138.

The final rule defines the terms “annuity contract” and “optional annuity contract” under the Securities Act of 1933. The rule is intended to clarify the status under the federal securities laws of indexed annuities, under which payments to the purchaser are dependent on the performance of a securities index. The effective date for this provision of the rule is January 12, 2011. The final rule also exempts insurance companies from filing reports under the Securities Exchange Act of 1934 with respect to indexed annuities and other securities that are registered under the Securities Act, provided that certain conditions are satisfied, including that the securities are regulated under state insurance law, the issuing insurance company and its financial condition are subject to supervision and examination by a state insurance regulator, and the securities are not publicly traded. The effective date for this provision of the rule is May 1, 2009.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"INDEXED ANNUITIES AND CERTAIN OTHER INSURANCE CONTRACTS"
(RIN: 3235-AK16)

(i) Cost-benefit analysis

The Commission performed a cost-benefit analysis of the final rule. The Commission anticipates that the final rule will benefit investors and covered institutions by: (1) creating greater regulatory certainty with regard to the status of indexed annuities under the federal securities laws; (2) enhancing disclosure of information needed to make informed investment decisions about indexed annuities; (3) applying sales practice protections to those indexed annuities that are outside the insurance exemption; (4) enhancing competition; and (5) relieving from Exchange Act reporting obligations insurers that issue certain securities that are regulated as insurance under state law. The Commission also included a detailed discussion of the anticipated costs in the final rule. For example, with respect to registration statements, the Commission estimates aggregate annual costs on insurers of \$82,500,000 for in-house personnel and outside professionals.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission prepared a Final Regulatory Flexibility Analysis for the final rule. In this analysis, the Commission included a consideration of alternatives to minimize any significant adverse impact on small entities. These alternatives included establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities, and providing an exemption from the requirements, or any part of them, for small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The final rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. On July 1, 2008, the Commission published a proposed rule in the *Federal*

Register. 73 Fed. Reg. 37,752. The Commission received approximately 4,800 comments on the proposed rule and responds to the comments in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

Although the final rule does not contain new information collections, the Commission determined that the final rule will result in an increase in the disclosure burden associated with existing Form S-1 as a result of additional filings that will be made on Form S-1. For this reason, the Commission submitted the Form S-1 to the Office of Management and Budget (OMB) for review and approval in accordance with the Act.

Statutory authorization for the rule

The Commission states that the final rule was promulgated under the authority in sections 3(a)(8) and 19(a) of the Securities Act (15 U.S.C. § 77c(a)(8) and 77s(a)) and sections 12(h), 13, 15, 23(a) and 36 of the Exchange Act (15 U.S.C. §§ 78l(h), 78m, 78o, 78w(a), and 78mm).

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to Executive Order 13,132.