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THE VOICE OF THE AGENT

NAIFA Files Comments with SEC on Proposed Rule 151A

Issue: Indexed Annuities

Date: September 15, 2008

Action Taken: On September 10 NAIFA filed extensive written comments with the SEC opposing SEC proposed Rule 151A. The SEC proposal, which would result in most indexed annuities (and possibly other annuity and insurance products) being classified as "securities," has generated a significant amount of heated debate over this issue.

If the proposed rule is adopted, the SEC and FINRA would have authority over indexed annuity sales, and someone who wishes to market/sell indexed annuities would need a series 6 or 7 securities license and be required to have IA sales supervised by a broker/dealer. An insurance producer license, by itself, would no longer be sufficient.

Background: While NAIFA strongly believes that people who engage in unscrupulous or misleading sales practices should be aggressively prosecuted and subject to appropriate and meaningful sanctions, in NAIFA's view indexed annuities do not meet the existing test for determining whether a product is a security. An insurance product that does not meet this test should be regulated by state insurance departments and should not be under the jurisdiction of the SEC or FINRA. This is an important principle which must be preserved in order to protect the appropriate regulation of all insurance products.

An additional concern that NAIFA has is that the application of proposed Rule 151A would not be limited to indexed annuities, and that other annuity and insurance products that fit the rule's criteria could be brought within the scope of the rule. In fact, the SEC had specifically asked for public comment on whether the proposal should apply to life insurance and/or health insurance.

Next Steps: In its comments, NAIFA noted its commitment to working with state insurance departments towards the goal of having every state adopt and vigorously enforce the NAIC's model regulations on annuity suitability and disclosure. In addition, we pointed out that existing state insurance laws and regulations addressing unfair trade practices and advertising are powerful additional weapons to use against inappropriate marketing practices. Finally, NAIFA also recommended to the SEC that a state regulatory body be designated to develop standards for indexed annuity product design that would be implemented by state insurance regulators and used to prevent inappropriate indexed annuity products from reaching the marketplace.

NAIFA's comment letter to the SEC can be reviewed on the NAIFA web site at <http://www.naifa.org/advocacy/documents/SEC09102008.pdf>.

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NAIFA-California Blunts Attack on Life Insurance

Issue: California Legislature-Business Use of Life Insurance

Date: September 16, 2008

Action Taken: A bill was introduced in the California Assembly (No. 31) on September 5, 2008 that would remove the exclusion in the Corporate Income Tax Law for amounts received by a corporation under life insurance policies paid by reason of the insured's death.

NAIFA-California immediately went to work to discover why this bill was introduced and what prospects it had for success.

NAIFA is pleased to report that NAIFA-California reported yesterday that this proposal is not part of a current package of budget compromises reached over the weekend by California legislative leaders to resolve California's budget and will not be considered this year.

"This is great work on NAIFA-California's part, and the industry coalition that worked for this result," commented NAIFA President Cliff F. Wilson, CLU, ChFC, LUTCF. "This legislative threat to life insurance in California should be a warning to all NAIFA members that nothing is a given in the budget environment that many states and our national government face," Wilson added. "We must be ever vigilant."

NAIFA-California leaders have underscored that point. They caution that NAIFA-California believes the proposal will very likely be considered in the next legislative session next year. Therefore, NAIFA-California and NAIFA must be prepared for a fight next year. And, given the copy-cat nature of state legislatures, it will be imperative that the entire NAIFA federation be on guard

Background: On September 5, California Assemblyman Charles Calderon introduced AB 31, a bill that would tax life insurance death benefits payable to corporations, and the inside buildup in life insurance policies owned by corporations. The bill is a response to a "fiscal emergency" in California, and if enacted would be effective immediately as a "tax levy."

AB 31 would amend California's corporate income tax law, sections 24302 and 24305. It applies to corporate rather than individual taxpayers. It would repeal two exclusions from taxable income: cash value accumulations, and death benefits. It would affect corporations that own life insurance and/or are paid death benefits from a life insurance, endowment, or annuity contract.

According to the California Assembly's legislative counsel's digest, AB 31 would repeal "the exclusion from gross income in computing tax liability for any amounts received under life insurance, endowments, or annuity contracts, either during the term or at maturity or upon surrender of the contract equal to the total amount of premiums paid thereon, other than amounts paid by reason of the insured's death." It would also repeal a separate "exclusion from gross income for any amounts received under life insurance policies and contracts paid by reason of the insured's death."

AB 31 was introduced as a way to address "the fiscal emergency declared by the Governor by proclamation issued on January 10, 2008...and thus would require for passage the approval of 2/3 of the membership of each house of the

Legislature.”

Next Steps: In addition to preparing for tax battles in state legislatures starting next January, solutions proposed to ease California’s budget condition could easily leach over to Congress. Congress is facing its own budget crisis, and will be looking at every current tax incentive as a source of new revenue.

At the moment, tax writers on Capitol Hill are reacting cautiously to what is widely viewed as a fairly radical proposal in California. NAIFA and a broad coalition of life insurance allies are preparing for what looks like a “perfect storm”-- the environment on the tax/budget front in Congress that will begin to shape up after the November 4 elections. The strong effort of NAIFA-California in convincing legislative leaders to drop AB 31 from the budget package in California may help insulate NAIFA members from a similar attack at the Federal level next year. Members of Congress are ever watchful for signs of weakness in lobbying organizations such as the NAIFA federation.

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U.S. House of Representatives Advances Legislation to Streamline Agent Licensing

Issue: Insurance Regulatory Reform

Date: September 17, 2008

Action Taken: The U.S. House of Representatives today voted to advance legislation aimed at streamlining the licensure process for agents when it passed H.R. 5611, the National Association of Registered Agents and Brokers Reform Act of 2008. The bill had been previously approved by the House Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises in July. H.R. 5611 bypassed full Committee votes and was sent directly to the House floor today under suspension rules.

Background: The National Association of Registered Agents and Brokers Reform Act of 2008—dubbed NARAB II—would ease the multi state licensing process for insurance producers by allowing agents and brokers the choice to join a licensure clearinghouse known as NARAB. Members of NARAB will be held to single set of non resident licensing and continuing education standards. For more information and quick facts about NARAB II please go to: <http://www.naifa.org/advocacy/irr/narab.cfm>.

NAIFA worked very closely with the bill's sponsors Rep. David Scott (D-GA) and Rep. Geoff Davis (R-KY) to bring about NARAB's passage.

NAIFA's Position: NAIFA supports state and federal efforts to achieve insurance regulatory reform and modernization that helps American families and businesses achieve financial security. NAIFA's Board of Trustees previously voted to support H.R.5611, and will continue to work to advance this bill through the legislative process. NAIFA will continue to keep members informed of further developments.

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House and Senate to Take up Market Rescue Plan; NAIFA encourages New Office of Insurance Information

Issue: Financial Services Regulation

Date: September 22, 2008

Action Taken: On Saturday, the U.S. Department of Treasury submitted legislation to the Congress that, if enacted, would grant Treasury the authority to issue up to \$700 billion of debt securities to finance the purchase of troubled assets from financial institutions. According to the Treasury Department, the purchases are intended to be of residential and commercial mortgage-related assets that were issued on or before September 17, 2008, by financial institutions with significant U.S. operations. The proposal gives the Secretary of Treasury, in consultation with the Chairman of the Federal Reserve, the discretion to purchase other assets up to the \$700 billion cap. Such assets could include those belonging to foreign companies if the move is deemed necessary to effectively stabilize the markets. The authority to purchase troubled assets would expire 2 years after the enactment date.

The proposal also gives the Treasury full discretion over the management of the assets which will be handled by private asset managers. Treasury may sell the assets at its discretion or may hold assets to maturity. Cash received from liquidating the assets, including any additional returns, will be returned to Treasury's general fund. Beginning three months following the first asset purchase, Treasury will be required to provide semi-annual reports to Congress on the status of the program.

Capitol Hill response: Senate Banking Committee Chairman Chris Dodd (D-CT) and House Financial Services Committee Chairman Barney Frank (D-MA) are currently working to reach consensus as soon as possible on a legislative response to Treasury's proposal. Dodd and Frank have already stated that among the changes they intend to include are scaling back the Treasury Secretary's discretionary authorities by instituting greater oversight, providing more relief to struggling homeowners, and placing limits on executive compensation for the financial institutions that participate. Both Committees will be holding hearings on the Treasury proposal this week. NAIFA will be covering those hearings and will continue to keep you apprised of important developments.

NAIFA response: In response to a virtual avalanche of media coverage focusing on turmoil in the financial markets this week, NAIFA reiterates the importance of calm, sound financial advice, stressing that the role of agents and advisors is never more crucial than in uncertain economic times. In addition, NAIFA supports the creation of an Office of Insurance Information within the Treasury Department to serve as a body of expertise on insurance at a time when broader federal attempts to stabilize the financial services markets could be impeded by this lack of federal expertise. Today NAIFA sent a letter to all members of the House of Representatives urging them to pass [H.R. 5840](#) and create such an office. Passage of [H.R. 5840](#) would ensure that, as Congress, the Federal Reserve, the Department of Treasury, and other Administration officials explore systemic solutions to our financial services issues, the vital insurance component of that sector will be a core element of those deliberations.

- [View NAIFA's letter to Congress.](#)
- [View a copy of NAIFA's press release in response to the market turmoil.](#)

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Senate Banking Committee Holds Hearing on Market Rescue Plan

Issue: Financial Services Regulation

Date: September 23, 2008

Action Taken: Today Members of the Senate Banking Committee held a hearing to address the recent market turmoil and the Bush Administration's proposed rescue plan. The hearing was described by many members of the Committee as the most significant hearing during their years of service in the Senate. The Committee heard testimony from:

- The Honorable Henry M. Paulson, Secretary of the Treasury
- The Honorable Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System
- The Honorable Christopher Cox, Chairman, Securities and Exchange Commission
- The Honorable James B. Lockhart, III, Director, Federal Housing Finance Agency

Testimony and Discussion: The 5-hour long hearing involved extensive discussion of the Administration's plan and concerns that it is just another request from the Administration to bailout Wall Street. The general themes of the discussion were the impact of the plan on taxpayers and the need for greater financial services regulatory oversight.

Affect on Tax Payers

Many members of the Banking panel expressed concern that the market bailout plan proposed by the Administration will rescue Wall Street at the expense of taxpayers. Secretary Paulson asserted that the taxpayers are already on the hook because their access to credit is directly impacted by the market turmoil. He explained that failure to act quickly could be disastrous for the U.S. economy and that the results would be far worse for taxpayers. Bernanke echoed Paulson's statement. Several members of the Committee expressed the desire to have the Treasury issue warrants to buy stock in participating firms to ensure that the taxpayer benefits from future profits as a result of the rescue plan. In addition, they want to place limits on executive compensation and prohibit "golden parachute" severance arrangements with the senior executives of participating financial institutions. Paulson explained that both moves would deter firms from participating in the program.

Greater Financial Services Regulatory Oversight

There was general agreement by the Committee and panelists that a plan for a broad overhaul of the U.S. financial services regulation will be a necessary next step to preventing future turmoil. When asked by Senator Tim Johnson (D-SD) if he believes an optional federal charter for insurance is necessary as part of the equation, Secretary Paulson responded "yes" — citing the Treasury Blueprint plan released in March of this year which calls for an OFC as an interim step towards comprehensive regulatory overhaul of all U.S. financial institutions. Chairman Christopher Dodd (D-CT) stated that he has already been in discussion with Chairman Bernanke about financial regulatory restructuring and wants to continue those conversations in the coming weeks with the hope of developing a plan before the next Administration takes office.

House of Representatives Response: Democrats in the House of Representatives are circulating a 42-page discussion draft response to the Administration's plan. Provisions of the draft include:

- Procedural requirements to avoid selecting asset managers with potential conflicts of interest
- Establishing an insurance or guarantee fund for money market mutual funds
- Limiting executive compensation from participating financial institutions
- Prohibiting severance pay arrangements with senior executives
- Granting bankruptcy judges the power to restructure bad home loans or adjust monthly payments for struggling homeowners
- Granting the Treasury Secretary authority to issue stock warrants when appropriate
- Establishment of a Congressional panel to oversee and report to Congress on the program

An updated draft that reflects negotiations with Administration officials has reportedly been developed but will not be released until tomorrow. The Democrat response will be featured at tomorrow's House Financial Services Committee (HFSC) hearing on market turmoil. HFSC Republicans today sent a letter to House Speaker Nancy Pelosi (D-CA) inviting her as their witness to tomorrow's hearing so that she may explain the Democrat's proposal and discuss alternatives.

State Government Response: New York Governor David Paterson announced Monday that, effective January 1, 2009, the New York Department of Insurance will begin regulating credit-default swaps (CDS) as insurance products in instances where the buyer of the swap also owns the bond the swap is intended to protect. In his view, credit-default swaps are unregulated insurance-like contracts that led to the downfall of AIG, and contributed to the bankruptcies of Lehman Brothers and Bear Stearns. Currently 1/5 of the \$62 trillion unregulated CDS market is in New York. Paterson called on the federal government to follow New York's lead and regulate the swap market.

- **See also:** [House and Senate to Take Up Market Rescue Plan](#).

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House Financial Services Committee Holds Hearing on Financial Market Crisis

Issue: Financial Services Regulation

Date: September 24, 2008

Action Taken: The U.S. House of Representatives Committee on Financial Services held a hearing today to examine the U.S. financial market turmoil and the Administration's proposed rescue plan. Committee members heard testimony from Treasury Secretary Henry Paulson and Ben Bernanke, Chairman of the Federal Reserve.

Testimony and Discussion: Today's House hearing addressed most of the same issues discussed in yesterday's Senate Banking Committee hearing on the crisis. Democrats and Republicans are both concerned about the impact of the \$700 billion plan on taxpayers. In addition there is significant concern that the Congress is being asked by the Administration to sign off on another expensive bailout package with little time to ensure it is the best plan. As a result, they are asking for oversight measures to be included in the bill to ensure that Treasury is accountable for the use of the \$700 billion. Both Secretary Paulson and Chairman Bernanke reiterated previous statements that this bailout plan is crucial to restore confidence in the markets and address the credit crunch which directly impacts the ability of individuals and businesses to obtain loans. Both men stressed that they would prefer to have more time to address this issue but stressed that there is no choice but to act immediately in order to avert an economic meltdown. Earlier in the day, Congressional Budget Office Director Peter Orszag told the House Budget Committee that if Congress does not adopt a financial bailout package soon, the economy faces "a very substantial risk of utter financial chaos" that could resemble the Great Depression.

Action and Timing: The Administration is pushing for Congressional action by Friday of this week. It remains unclear if Congressional leaders and the Administration will reach an agreement on a final package in time for the scheduled House adjournment on Friday. Today House Majority Leader Steny Hoyer told reporters that the House may work through Sunday evening and return next week to ensure swift action.

Other Developments: President Bush announced today that he will be addressing the nation tonight at 9 p.m. EST. Bush is expected to discuss the state of the market and the necessity for quick action on the \$700 billion bailout package.

Additionally, presidential candidate John McCain has suspended his campaign to return to Washington to address the situation and has requested a delay in Friday's presidential debate for purposes of focusing on improving the economy. Barack Obama's campaign reportedly will reject the McCain's campaign's request to postpone the debate.

NAIFA will continue to follow any developments in this situation and will keep you informed as they happen.

See also:

- [Senate Banking Committee Holds Hearing on Market Rescue Plan](#)
- [House and Senate to Take Up Market Rescue Plan](#)

NAIFA Staff Contact: For additional information, please contact [Jill Edwards](#).

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House Rejects Economic Rescue Plan

Issue: Financial Services

Date: September 29, 2008

Action Taken:

This afternoon the U.S. House of Representatives rejected the Emergency Economic Stabilization Act of 2008 by a vote of 205-228. The vote breakdown is as follows:

YEA

Democrats – 140

Republicans – 65

NAY

Democrats – 95

Republicans – 133

Not Voting

Democrats – 0

Republicans – 1

To see how your elected Representative voted, [click here](#). (Please note that the bill used as a vehicle for today's rescue plan is H.R.3997, the Heroes Earnings Assistance and Relief Tax Act of 2007. Please do not be confused by the name of the bill).

Next Steps: Right now House leadership is scrambling to determine what will happen next. Democrat and Republican leaders have both expressed frustration that the bipartisan compromise did not receive enough support by the members of the House to pass today. Specifically there is still a lot to be determined, but House Speaker Nancy Pelosi (D-CA) has committed to continuing to work to get "another bite at the apple" on a legislative solution. She has said that House Oversight and Government Reform Committee, Chairman Henry Waxman (D-CA) will hold hearings on this issue later this week when the House returns from the Rosh Hashanah holiday. In addition, House Minority Leader John Boehner (R-OH), while joined by other Republican leaders in the House to express extreme disappointment with today's vote, announced their desire to continue to negotiate with Democrats to reach a bipartisan solution to this crisis. NAIFA will continue to monitor congressional activity and will keep you posted.

The Rejected Plan: Although there is uncertainty about next steps, we can report that the version of the bill that was voted on today did not include provisions that directly apply to or affect insurance agents and brokers. In addition, the following items (which may or may not be included in a final plan) may be of interest to you:

- A change to the tax code that would preclude capital gains treatment of gains or losses on sales of Fannie Mae and Freddie Mac preferred stock does not apply to insurance companies, but only to large banks and bank holding companies.
- "Recoupment" provisions were added that direct the President to submit a plan after five years to recover from "financial institutions" any loss incurred by the bailout program. Until then, no "tax" or fee specific to the program will be assessed against a financial institution.
- An explicit authorization to allow the SEC to suspend the mark-to-market accounting standard and a direction for the SEC to study the standard and report back to Congress on it within 90 days of bill passage.
- Slight changes to the executive compensation limits that would apply to institutions participating in the program, which will amount to somewhat tighter restrictions for institutions that make direct sales of assets to the government and slight

loosening for those whose assets are acquired by the government through an auction.

- The board ballot access and shareholder-vote-on-executive compensation provisions have been deleted.
- Elimination of the provision that would have allowed bankruptcy courts to modify residential mortgages.

Other Developments: Today the U.S. Department of Treasury opened its Temporary Guarantee Program for Money Market Funds. The program has been established for an initial 3-month term and is designed to address temporary dislocations in credit markets. Under the program, Treasury will guarantee the share price of *eligible* money market funds that choose to participate. Funds with a net asset below \$.0995 as of the close of business on September 19, 2008 are ineligible. To read a list of frequently asked questions about the Treasury program, [click here](#).

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