Questions and Answers about the SEC Proposal to classify Fixed Indexed Annuities as Securities

Q. Has the SEC moved to regulate the sale of fixed indexed annuities as securities?

A. On Wednesday, June 25, 2008, the SEC proposed a new rule to regulate most fixed indexed annuities as securities. The SEC takes the position that state insurance regulation of the sale of these annuities is inadequate to protect purchasers. According to the SEC, purchasers of fixed index annuities are "exposed to a significant investment risk—i.e., the volatility of the underlying securities index". Thus, the SEC is proposing that these contracts be registered so purchasers can receive a prospectus and product sales can be supervised by broker dealers.

Q. What is Old Mutual's (OM's) position on this issue?

A. OM supports efforts to improve sales practices and to better protect customers, but OM does not believe that the proposed rule is necessary in this regard. In addition, fixed indexed annuities are guaranteed products that are not subject to market risk in the manner of securities regulated by the SEC. Simply put, insurers offer fixed indexed annuities that provide significant guarantees under state insurance law that are not typical of securities.

Q. What is OM doing to respond?

A. OM is working with outside counsel and various trade groups and will share its views with the SEC as part of the comment process.

Q. What would be the impact of this proposed rule?

A. If adopted as proposed, the rule would require most fixed indexed annuities to be registered as a security with the SEC. As with other registered security offerings, sales would need to be preceded or accompanied by a prospectus, and only registered representatives of broker dealer firms could sell the product. The rule would add unnecessary and redundant disclosure to the sales process and likely impair the availability of fixed index annuities. Making fixed indexed annuities less readily available to the public would operate to deprive some consumers (those who do not have a brokerage account, for example) from access to the product's valuable guarantees.

Q. How valuable are the guarantees provided by fixed indexed annuities?

A. Given recent market turmoil, who has been better protected against significant investment risk—someone who bought a security, i.e., a stock mutual fund or an index fund, or a fixed indexed annuity, all of them tied to the same index? Some would say that recent statistics speak for themselves: as of Friday, June 27, 2008, the Dow Jones Industrial Average[i] has fallen almost 20% from its October, 2007 record while fixed indexed annuity purchasers have not lost any principal due to market performance.

OM offers a variety of fixed indexed annuities, some with index options based on the S&P 500 Index[ii], some based on the Dow Jones Index, and some with combinations of these indexes. We refer below to the Dow Jones Index only by way of example.

An investor who recently bought either a stock mutual fund or an index fund (each designed to track the Dow Jones Industrial Average) were, in the words of the SEC's release on fixed indexed annuities, "exposed to significant investment risk". Indeed, these purchasers have experienced losses in the neighborhood of 20% since last October. These purchasers also presumably received "the benefits of federally mandated disclosure and sales practice protections" which the SEC now wants to extend to purchasers of certain fixed indexed annuities that depend on the performance of a securities index.

The purchaser of a fixed indexed annuity with interest crediting tied to the Dow Jones Industrial Average--unlike the mutual fund or index fund investor-- has not lost 20% due to the drop in the Dow. Instead, the annuity interest crediting formula protects the annuity owner against loss due to negative drops in the index over the crediting period. Under the indexing formula guaranteed in the contract, a client may not receive any interest for a crediting period when the change in the Dow is negative. Many purchasers would prefer that result over a 20% loss of principal.

Although OM recognizes the benefits of federally mandated disclosures in the context of securities where the purchaser bears unlimited downside risk, we also recognize the limited usefulness of those same disclosures in the context of a guaranteed product such as a fixed indexed annuity.

The guarantees a fixed index annuity provides come with a price—one that is fully disclosed. If the markets measured by the relevant index have steadily increased during the crediting period, the purchaser of the fixed indexed annuity will generally receive less than the purchaser of a stock mutual fund or an index fund that tracks the same index, depending on any caps, participation rates or spreads that the fixed index annuity charges.

Q. What about the regulation of sales practices?

A. No one benefits from an unsuitable sale. OM is committed to assisting its producers in insuring that all sales are suitable for the client based on information the client provides.

A variety of distributors, including insurance agents, registered representatives of broker dealer and investment advisers currently offer fixed indexed annuities and traditional annuities to their clients. Although the SEC and/or FINRA already have jurisdiction today over some fixed indexed annuity sellers (registered representatives of broker dealers and investment advisory representatives) the SEC did not classify fixed indexed annuity sales practice complaints-- cited by the SEC as demonstrating the need for the proposed rule-- by type of distributor.

The SEC rule proposal ignores state insurance suitability requirements now in place in more than 35 jurisdictions. State insurance suitability obligations apply to **all** licensed insurance agents, including those who are registered representatives of broker dealers and investment adviser representatives.

OM believes that state insurance sales disclosure and sales practice protection laws and regulations applicable to fixed indexed annuities adequately protect consumers.

Q. What happens next?

A. The public has until September 10, 2008 to file comments on the proposed rule with the SEC. The SEC will meet again and decide, based on public comments, whether to adopt the rule as proposed or to publish a revised rule.

Q. How can I file a comment on this proposed rule?

A. Go to the SEC website at http://www.sec.gov/rules/proposed/2008/33-8933.pdf and follow the directions there; or, you may wish to participate in the comment process through trade associations you belong to.

Q. While the rule is pending, who can sell fixed indexed annuities?

A. The SEC has proposed that its rule to regulate fixed indexed annuities become effective one year after a final rule is adopted. In practical terms, unless the SEC opts for an earlier effective date, the earliest the new rule would become effective is September of 2009.

In the interim, our fixed indexed annuities may continue to be offered by insurance-only licensed representatives subject to state insurance suitability requirements. Sales by registered representatives of broker dealers and investment advisory representatives who are also licensed as insurance agents will continue to be subject to state insurance suitability rules, as well as applicable federal antifraud and suitability rules.

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[i] **Dow Jones Index**

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- The accuracy or completeness of the Dow Jones Industrial Average and its data;
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- The Dow Jones Industrial Average and the data included in the Dow Jones Industrial Average;

Under no circumstances will Dow Jones be liable for any lost profits or indirect, punitive, special or consequential damages or losses, even if Dow Jones knows that they might occur.

[ii] **S&P 500 Index**

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