No. 121452

IN THE
SUPREME COURT OF ILLINOIS

RICHARD LEE VAN DYKE,	)	Appeal from the Appellate Court, Fourth District, No. 4-14-1109
Plaintiff-Respondent,	)	
v.	)	On Appeal from the Circuit Court for the Seventh Judicial Circuit, Sangamon County, No. 14-MR-305
JESSE WHITE, Secretary of State, State of Illinois,	)	
Defendant-Petitioner.	)	Hon. John W. Belz, presiding.

AMICUS BRIEF OF NATIONAL ASSOCIATION FOR FIXED ANNUITIES IN SUPPORT OF RESPONDENT

E. King Poor
Gary R. Clark
Charles E. Harper
QUARLES & BRADY LLP
300 North LaSalle Street, Suite 4000
Chicago, Illinois 60654
(312) 715-5000
King.Poor@quarles.com

Attorneys for the National Association for Fixed Annuities (NAFA)

E-FILED
6/4/2018 12:30 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

Points and Authorities

Page

Points and Authorities
(continued)

INTRODUCTION AND INTEREST OF *AMICUS*

The briefs of the petitioner, Secretary of State (Secretary) and the two supporting *amici* make no mention of an obvious fact: the Secretary's attempt to regulate fixed indexed annuities as securities would make Illinois the only state in the nation to do so.[1] And if Illinois were to become the only state to do so, it would have serious consequences for thousands of insurance agents and a $4 billion a year industry in Illinois. For this reason, the National Association for Fixed Annuities (NAFA) seeks to provide the court with guidance and a broader perspective on fixed indexed annuities–what they are and are not—and what is at stake with the Secretary's attempt to have Illinois become the only state to regulate these annuities as both insurance *and* securities.

NAFA is a nationwide trade association that promotes education and understanding of all types of fixed annuities, including the fixed indexed annuities at issue—and referred to here as "fixed indexed annuities." Its membership includes 21 insurance companies doing business in Illinois and over 20,000 affiliated insurance agents who are licensed to sell fixed indexed annuities in the state. In 2016 alone, sales of fixed indexed annuities in Illinois totaled an estimated $4 billion. As the national organization that has worked closely with a variety of interests since fixed indexed annuities were first introduced in the mid-1990s, NAFA is uniquely qualified to explain how

[1] These annuities are sometimes referred to as "equity indexed securities" as in Secretary's brief. The insurance industry, including the National Association for Insurance Commissioners (NAIC), has long referred to them as "fixed indexed annuities." For consistency with that standard, they will be referred to in this brief as fixed indexed annuities.

regulating these annuities as securities would harm Illinois insurance carriers, distribution agencies, insurance agents, and the public.

First, making Illinois the only state to regulate these annuities as securities would be completely at odds with how federal law treats them. In fact, though the Secretary and its supporting *amici* rely on federal law, they fail to mention another obvious fact: Congress has expressly exempted fixed indexed annuities from federal securities regulation. In 2010, in what became known as the "Harkin Amendment," Congress clarified that fixed indexed annuities and other insurance products would continue to be regulated by state insurance departments as insurance—and not as securities subject to federal oversight.

The Harkin Amendment was designed to provide a safe harbor from federal securities regulation for these annuities if they were regulated by state insurance departments. In 2011, the Illinois Department of Insurance adopted the safe-harbor standards of the Harkin Amendment so that fixed indexed annuities would continue to be regulated in Illinois as insurance products and not as securities. And because Congress has entrusted the regulation of fixed indexed annuities to state insurance departments, this goes a long way to explain why no other state has attempted to regulate them as securities. For Illinois to become the only state to regulate these annuities as securities would undermine the uniform nationwide system of state regulation established by the Harkin Amendment.

What is more, fixed indexed annuities give retirees in Illinois, as they do across the nation, safe and predictable retirement income that also guards against inflation. But if these annuities are now treated as securities, then some

20,000 insurance agents throughout Illinois would no longer be qualified to sell them unless they become licensed securities brokers—a substantial and expensive hurdle for most. That would mean that thousands of insurance agents would lose a major share of their livelihood.

Further, allowing two separate agencies to regulate these annuities as both insurance and securities is not only unprecedented, it will cause confusion and uncertainty for insurance companies, agents, and the public. Indeed, some insurance carriers may simply decide to stop selling this product in Illinois altogether, which means the Secretary's ruling has the potential for driving much of what has been a $4 billion a year industry out of Illinois.

The Illinois Department of Insurance has regulated fixed indexed annuities for many years. And the department has a well-developed system of regulations for such annuities. On the other hand, the Secretary has no such system. Further, the Illinois Securities Law and the Illinois Insurance Code, when read together, make this plain: fixed indexed annuities are excluded as securities, but are included as insurance. No statute, regulation, or case law supports Illinois becoming the only state in the nation to regulate fixed indexed annuities as both insurance and securities. The appellate court's decision that these annuities are not securities should be affirmed.

STATEMENT OF FACTS

A. Fixed indexed annuities differ from variable annuities.

Fixed indexed annuities differ fundamentally from variable annuities, which federal law has long treated as securities. Unlike variable annuities, fixed indexed annuities protect against the loss of principal by providing a guaranteed minimum value which increases each year with a minimum annual interest rate. A fixed indexed annuity offers the ability to earn interest based on the performance of a particular market index, such as the S&P 500 or Dow Jones.[2]

If the market index goes up, the interest rate earned by the owner goes up. If, on the other hand, the market index goes down, the owner of the annuity loses nothing and continues to be protected by the guarantee against the loss of principal.[3] The central feature of a fixed indexed annuity is that the insurer, *not* the consumer, assumes the risk of making good on the guarantees of principal and minimum return. These guarantees mean that an owner of a fixed indexed annuity cannot lose money based on how the index performs.

An example shows how this works in practice. A fixed indexed annuity may offer interest of up to 4% a year based on the annual change in an index such as the S&P 500. If that index increases by 4% in a given year, then the customer would earn interest of up to 4%. If that same index goes up by 5%, the customer would realize the earned interest increase but would receive no more than 4% because the annuity contract was capped at 4%. But if the index goes down by say 5%, 10%, or 15% in a given year, the customer still does not lose any principal or earned interest. The customer's principal will still be protected and will not be subject to downside losses. The upside is limited because the customer has no

---

[2] *See* http://insurance.illinois.gov/Life_Annuities/consumerLife.htmllast (under heading "Equity [Fixed]-Indexed Annuities;" last visited May 22, 2018.)

[3] Surrendering any annuity, whether a fixed annuity or fixed indexed annuity, before maturity may result in surrender charges.

corresponding downside market risk. The company assumes the risk of any market loss in exchange for any upside gain being limited.

On the other hand, variable annuities provide no such protections. They offer no minimum rate of interest or guaranteed minimum value and leave owners of annuities vulnerable to loss if the market declines. With variable annuities, the owner, not the insurer, bears the risk of a market downturn. For this reason, variable annuities have long been regulated as securities under federal law.

B. With the Harkin Amendment, fixed indexed annuities are exempt from federal securities regulation.

Historically, the Securities and Exchange Commission (SEC) exempted any annuity from federal securities regulation that was not marketed primarily as an investment and for which the insurer assumed the risk of loss. *See* 17 C.F.R. § 230.151; *see also American Equity Inv. Life Ins. Co. v. S.E.C.*, 613 F.3d 166, 170 (D.C. Cir. 2010). Fixed indexed annuities, first introduced in 1995, met these criteria and were always considered exempt from federal securities laws. These annuities became popular and their sales grew rapidly. By 2007, the sales of fixed indexed annuities had increased to $24.8 billion nationwide and 58 different insurance companies were selling them. *Id.* at 170.

In response, the SEC issued Rule 151A in an attempt to regulate these annuities as securities. *Id.* at 170-71. With its proposed rule, the SEC attempted to make fixed indexed annuities "subject to the full panoply of requirements set forth by the Act [the federal securities act], instead of being subject solely to state insurance laws." *Id.* at 167. But the Court of Appeals for the District of Columbia overturned this rule before it took effect. Though the court deferred to the SEC's interpretation that fixed indexed annuities were not exempt from securities regulation, it still overturned Rule 151A as "arbitrary and capricious" because the SEC failed to consider the rule's effect on efficiency, competition, and capital formation. *Id*. at 177-79.

Congress then stepped in. As part of the Dodd-Frank Act of 2010, Congress clarified that fixed indexed annuities would remain exempt from regulation as securities and reaffirmed the longstanding authority of the states to regulate them solely as insurance products. Specifically, under the Harkin Amendment to the Dodd-Frank Act, these annuities are exempt from federal securities regulation if the products meet three criteria: (1) its value does not vary according to the performance of a separate account, (2) it satisfies state "nonforfeiture" laws guaranteeing that the owner always has a minimum-protected cash value, and (3) it is either sold in a state that has adopted suitability standards modeled after those of the National Association of Insurance Commissioners, or the insurer itself has adopted such standards.[4]

C. Illinois adopts the model suitability standards.

Even before the Harkin Amendment, the Illinois Department of Insurance (Department) regulated fixed indexed annuities as insurance products. *See* Ill. Dep't of Ins., Company Bulletin No. 2009-5 (Apr. 13, 2009) (clarifies that annuity contracts dependent upon the performance of a securities or other index will continue to be regulated as insurance contracts) (attached as Appendix A).

---

[4] The Harkin Amendment was added to the Dodd-Frank Act, H.R. 4173, as section 989G, and is codified as a note to 15 U.S.C. § 77c(a)(8).

In 2011, the Department adopted the suitability standards called for in the Harkin Amendment. *See* 50 Ill. Admin. Code 3120, ("Suitability in Annuity Transactions"). Fixed indexed annuities, like all contracts of insurance, are subject to the Department's other rules and regulations. In particular, annuities must be approved by the Director of Insurance. 215 ILCS 5/143(1). The director may withhold approval for any annuity "if it contains provisions which encourage misrepresentation or are unjust, unfair, inequitable, ambiguous, misleading, inconsistent, deceptive, contrary to law or to the public policy of this State, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy." *Id*. The Department also ensures that every fixed indexed annuity contains certain contractual promises, namely, a guaranteed minimum value. 215 ILCS 5/229.4a (statute details minimum values).

Additionally, the Department provides its own "Buyer's Guide Equity [Fixed]-Indexed Annuities" that educates consumers about the difference between variable and fixed indexed annuities. (*See* http://insurance.illinois.gov /Life_Annuities/consumerLife.htmllast (under heading "Equity [Fixed]-Indexed Annuities," last visited May 22, 2018.) The guide explains that with a variable annuity, "[t]here is no guarantee that you will receive all of your premiums back. There is also no guarantee that you will earn any return on your annuity." *Id*. For fixed indexed annuities, on the other hand, the guide states that "When you buy an equity [fixed]-indexed annuity you own an insurance contract. You are not buying shares of any stock of index." *Id*.

The Department oversees other aspects of fixed indexed annuities as well. In addition to licensing insurance agents, the Department's regulations devote an entire part to "Suitability in Annuity Transactions." 50 Ill. Admin. 3120. These suitability regulations require that agents have a reasonable basis to recommend a particular form of annuity (50 Ill. Adm. Code 3120.50(a)) and also require training on "how fixed, variable and indexed annuity contract provisions affect consumers." 50 Ill. Adm. Code 3120.60 (c)(4)(C)).

Further, under the Insurance Code, insurers are required to provide consumers with a "free-look" period after a contract is issued during which the consumer may cancel the contract and receive a full refund. 215 ILCS 5/226(1)(h) (statute describes ten-day rescission period). The Insurance Code also requires insurers and agents to submit marketing materials to the Department before they are distributed to the public. 215 ILCS 5/143(1).

D. No other state treats these annuities as securities.

While the Department has a comprehensive statutory and rule-based structure for regulating fixed indexed annuities, the Secretary has no such structure at all. Moreover, the Illinois Securities Law expressly excludes from the definition of a security "an annuity contract issued by a life insurance company authorized to transact business in this State." 815 ILCS 5/2.14. If fact, that same law also expressly excludes fixed indexed annuities from registration as a security. 815 ILCS 5/3(M) (statute exempts from registration "[a]ny security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state").

Despite this, the Secretary's conclusion that fixed indexed annuities should be treated as securities is limited to only two sentences in its order against respondent, Richard Van Dyke:

> The Indexed Annuities that are the subject of this Matter are securities subject to the Act. Although an Indexed Annuity is exempt from registration with the Department, the offer or sale of an Indexed Annuity is still subject to the other provisions of the Act.

Final Order of April 9, 2014 at ¶ 18. The order contains no other citation of authority, reasoning, or analysis. This is the extent of the Secretary's findings on this entire issue.

Before issuing this ruling with statewide consequences, the Secretary never gave notice to the public, never sought public comment, and never engaged in ordinary rulemaking procedures to gauge the concerns of the public. And even now, the Secretary cannot deny that his attempt to treat fixed indexed annuities as securities would make Illinois the only state in the nation to do so.[5]

ARGUMENT

A. The Secretary cannot rely on reasoning after the fact.

A basic tenet of administrative law is that an agency decision may be upheld only based on the reasoning of the agency itself. A reviewing court may

[5] The department also provided for an alternative ground to revoke Van Dyke's license and fine him unrelated to its finding that fixed indexed annuities are securities. The alternative ground involves his status as a registered investment advisor under 12.J of the Securities Law. NAFA takes no position on this alternative ground, so long as it does not include any finding that fixed indexed annuities are securities.

not supply a basis for a decision that the agency itself never provided. *Citizens Util. Co. v. Ill. Commerce Com'n*, 214 Ill. 2d 195, 211 (1988) (following federal precedent to state that "an administrative decision will not be upheld on grounds different from those expressed by the agency itself in its decision"). This fundamental principle governs here.

The Secretary's decision to treat fixed indexed annuities as securities is confined to two sentences. And these two sentences are conclusory—with no reasoning, or citation to any statute, rule, or case law. Final Order ¶ 18. The Secretary sought no public comment or rulemaking for a decision that would have far reaching consequences across the state.

To shore up his ruling, the Secretary's brief offers arguments and theories for regulating these annuities that are nowhere to be found in his ruling. With no reasoning or analysis for a decision that would affect the livelihoods of thousands of Illinois insurance agents and the public that purchases these annuities, the Secretary's two-sentence ruling is the very definition of an agency action that is arbitrary and capricious. *See Medina Nursing Ctr., Inc. v. Health Facilities and Services Review Bd.*, 2013 IL App (4th) 120554 ¶ 24-26 (administrative agency must provide reasoning for decisions and court will not do so); *Greer v. Ill. Housing Dev. Auth.*, 122 Ill. 2d 462, 505-06 (1988) (agency action is arbitrary and capricious if it is a "sudden and unexplained" change in policy). The appellate court here correctly concluded that the Secretary's ruling "lacks any reasoned explanation in its administrative order." *Van Dyke v. White*, 2016 IL App (4th) 141109 at ¶ 26.

B. The Securities Law excludes fixed indexed annuities and the Insurance Code includes them.

In addition to a decision that is not based on an reasoning or analysis, the Secretary's ruling cannot stand because the Illinois Securities Law of 1953 itself—and especially when read together with the Insurance Code— does not allow fixed indexed annuities to be treated as securities. First, under the Securities Law, a security is defined to include a "face amount certificate." 815 ILCS 5/2.1. That definition, however, excludes any "annuity contract issued by a life insurance company authorized to transact business in this State." *Id.* at § 2.14.

Fixed indexed annuities fall squarely within that exclusion under the plain language of the statute. The appellate court examined that same language and concluded: "Here, the indexed annuities in question are annuities issued by insurance companies authorized to transact business in Illinois. Thus, they are not securities under Illinois law. To hold otherwise would go against the plain language of the [Securities Law]." *Van Dyke*, 2016 IL App (4th) 141109 at ¶ 24.

In addition, the Securities Law also excludes fixed indexed annuities from registration as a security. 815 ILCS 5/3 (M) (statute exempts from registration "[a]ny security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state"). This further reinforces that the Securities Law does not intend to regulate fixed indexed annuities. *See Babiarz v. Stearns*, 2016 IL App (1st) 150988, ¶ 34 (language of the Securities Law supports conclusion that fixed indexed annuities are insurance products and not regulated as securities, citing 815 ILCS 5/3 (M)).

Not only does the Securities Law exclude such annuities, under the Insurance Code, they are unmistakably included. Indeed, fixed indexed annuities have long been regulated under the Insurance Code. As the court explained in *Babiarz* when analyzing the statutory language and holding that fixed indexed annuities are not securities:

> Defendants correctly point out that the Illinois Insurance Code (215 ILCS 5/4(a) (West 2012) classifies "annuity contracts" as insurance products and regulates annuities as insurance products in various provisions throughout the Insurance Code. See 215 ILCS 5/226 (West 2012) (annuity contracts regulation); 215 ILCS 5/229.4a (West 2012) (annuity regulation). We note, however, that the Insurance Code does not specifically refer to "fixed indexed annuities."

2016 IL App (1st) 150988 at ¶ 29. The court then went on to recognize that the Department of Insurance itself has "issued a bulletin declaring that it governs [fixed indexed annuities]." *Id.* at ¶ 30. It also pointed out that the Department's own rules refer to annuities as insurance products and require "insurance producers to familiarize themselves with 'fixed indexed annuities.'" *Id*. at ¶ 31 (citations omitted).

In addition to the provisions of the Insurance Code mentioned in *Babiarz*, and as discussed above, the Code has other provisions designed to regulate fixed indexed annuities. These include (1) that annuities be approved by the Director of Insurance who may withhold approval if any provisions are misleading to the public or inconsistent with the law or public policy (215 ILCS 5/143(1)), and (2) the Department is charged with ensuring that every fixed indexed annuity contains certain contractual promises, namely, a guaranteed minimum value. 215 ILCS 5/229.4a (statute details minimum values). The court in *Babiarz* also noted that because the Department adequately regulates these annuities, there is no justification to subject them to dual regulation as securities. *See also American Mut. Reinsurance Co. v. Calvert Fire Ins. Co.*, 52 Ill. App. 3d 922, 929 (1st Dist. 1977) (if Department of Insurance has adequate means for regulating a product, the Illinois Securities Law does not apply).

To be sure, neither the Securities Law nor the Insurance Code expressly refer to "fixed indexed annuities." *See Babiarz*, 2016 IL App (1st) 150988 at ¶¶ 29, 34 (recognizing that neither law specifically uses the term). But that does not determine the outcome. Neither statute is in conflict or ambiguous. When two statutes are not in conflict and are unambiguous, then they must be applied as written, "without resort to extrinsic aids of statutory construction." *Lawler v. U. of Chicago Medical Ctr.*, 2017 IL 120745 ¶ 40.

Considering the unambiguous language of both statutes as whole, the Securities Law excludes annuities and the Insurance Code is designed to regulate them. And that is enough. One statute *excludes* these annuities without exception; the other *includes* them without exception. This basic conclusion may be reached by adhering to the text of both statutes without extrinsic aids of statutory construction.

Further, the Secretary has offered no reasonable reading of the two statutes to show they are in conflict or are ambiguous. But even if the two statutes were in conflict or ambiguous, as discussed in the final two sections below, applying traditional tools of statutory construction show that subjecting fixed indexed annuities to dual regulation by both the Secretary and Department produces unsound policy that the legislature would have never intended. Only one reasonable construction remains: the Department of Insurance alone regulates fixed indexed annuities and they are not securities subject to dual regulation by the Secretary.

C. The Secretary's decision is completely at odds with state law following a uniform federal system.

Illinois courts have long followed federal law when interpreting the state's securities law. *JJR, LLC v. Turner*, 2016 IL App (1st) 143051 ¶ 30 (Illinois courts consistently look to federal law to interpret Illinois Securities Law); *see also Goldberg v. 401 N. Wabash Venture LLC*, 755 F.3d 456, 465 (7th Cir. 2014) (Illinois law follows federal securities law interpretation of an investment contract, citing *Ronnett v. American Breeding Herds, Inc.*, 124 Ill. App. 3d 842, 847 (1st Dist. 1984)). And there are good reasons for Illinois law to follow federal securities law. Federal law reflects a uniform set of rules and decisions that may be relied on nationwide. But the Secretary offers no authority that when it comes to fixed indexed annuities, Illinois should ignore the federal model and do the exact opposite.

With the Harkin Amendment, Congress expressly decided not to regulate fixed indexed annuities as securities in favor of continuing the existing regulation of these products by state insurance departments. Yet the Secretary's brief makes no mention of the Harkin Amendment. Similarly, the briefs of *amici* supporting the Secretary make no mention of it.

Rather than discuss the most recent and direct federal authority on the regulation fixed income annuities, the Secretary relies heavily on case law going back to long before such annuities ever existed. Br. at 30-33, 41-44 (discussing and citing *SEC v. United Benefit Life Ins. Co.*, 387 U.S. 202, 210-12 (1967), *SEC v. Variable Annuity Life Ins. Co. of Am.*, 359 U.S. 65, 68-72 (1959), *Otto v. Variable Annuity Life Ins. Co.*, 814 F.2d 1127, 1140 (7th Cir. 1986). Not only do these decisions pre-date the Harkin Amendment by decades, the very issue decided in these cases is one that no party here disputes here—namely, that *variable* annuities should be treated as securities. Variable annuities have long been regulated as securities under federal law because of their variable risk.

Moreover, it is not enough for the Secretary now to try to coax out some similarities between variable and fixed indexed annuities. Whatever similarities may arguably exist are beside the point. Congress has spoken clearly:
fixed indexed annuities are exempt from federal securities regulation and that regulation has been entrusted to state insurance departments if certain requirements were met. In Illinois, those safe harbor requirements were met early on. Just one year after the Harkin Amendment, in 2011, the Department adopted the suitability standards called for under federal law.

As such, the Secretary is essentially urging the creation of a special Illinois-only system of securities regulation—one just for fixed indexed annuities and that is completely untethered from federal law. Under such a system, state law would not just differ from federal law on certain details, it would be the exact opposite. The Secretary provides no convincing argument as to why Illinois should be the only state in the country with its own unique system of dual regulation for fixed indexed annuities that is wholly at odds with federal law that provides a uniform nationwide safe harbor.

Under the doctrine of *in pari materia*, statutes relating to the same basic subject matter are presumed to be governed by "one spirit and a single policy" and they are also intended work together so as to be "consistent and harmonious." *Relf v. Shatayeva*, 2013 IL 114925 at ¶ 39. That doctrine applies here when interpreting the Securities Law and the Insurance Code together. The Secretary would read these two laws so as to eclipse the federal safe harbor with a special Illinois-only system of dual regulation. But that would undermine a system of uniform and harmonious regulation and set the stage for conflict between the Secretary and the Department. There is no support for an interpretation so contrary to a single harmonious policy.

D. Reasonably construing the two statutes avoids driving much of a $4 billion-a-year industry out of Illinois.

Statutory construction also presumes that the legislature does not "intend absurdity, inconvenience, or injustice." *Klaine v. Southern Illinois Hosp. Services*, 2016 IL 118217 ¶ 14. Here, however, to allow the Secretary and the Department to both regulate the same annuities is a recipe for confusion, unfairness, and onerous expense throughout the state.

If the Secretary's decision stands, some 20,000 insurance agents across Illinois, who currently sell fixed indexed annuities, would lose their ability to do so overnight. Unable to sell these annuities, these agents would lose substantial income. In Illinois alone, insurance agents sell close to $4 billion worth of such annuities each year. For agents to regain their ability to sell such annuities as securities would not be automatic or easy. They would need substantial time to prepare for and pass extensive and expensive securities broker's examinations.

The time and expense required to obtain such securities licenses would be unrealistic for many.

Moreover, if Illinois becomes that only state to subject fixed indexed annuities to such contradictory and duplicative regulation, then insurance companies may have little choice other than to stop selling these annuities in Illinois. And if the sales of these annuities are forced out of Illinois, not only do the insurance companies and their agents lose, but this would be a loss for Illinois residents—many who are retirees—who have relied on these annuities to provide stable income along with market-based gains to offset inflation.

When federal law has delegated the regulation of fixed indexed annuities to state insurance departments, no other state has looked for new ways to regulate them as securities. No other state has sought dual regulation that would deprive its insurance agents of income and drive much an industry from its borders. No reading of the Securities Law, the Insurance Code, regulation, or case law supports creating such unworkable double regulation that injures both businesses and consumers across Illinois. The Secretary's attempt to regulate fixed indexed annuities as securities cannot stand and should be overturned.

CONCLUSION

The appellate court's decision that fixed indexed annuities are not securities within the meaning of Illinois law should be affirmed.

Dated: May 23, 2018

Respectfully submitted,

NATIONAL ASSOCIATION FOR
FIXED ANNUITIES

By: /s/ E. King Poor
One of Its Attorneys

E. King Poor
Gary R. Clark
Charles E. Harper
QUARLES & BRADY LLP
300 North LaSalle Street, Suite 4000
Chicago, Illinois 60654
(312) 715-5000
King.Poor@quarles.com

Counsel for the National Association for Fixed Annuities (NAFA)

RULE 341 CERTIFICATE OF COMPLIANCE

I, E. King Poor, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, is 18 pages.

/s/ E. King Poor

INDEX TO APPENDIX FOR *AMICUS BRIEF* OF THE NATIONAL ASSOCIATION OF FIXED ANNUITIES

BULLETIN

TO: ALL COMPANIES, FOREIGN and DOMESTIC, AUTHORIZED TO WRITE LIFE and/or ACCIDENT and HEALTH INSURANCE IN ILLINOIS (including FRATERNALS)

FROM: MICHAEL T. McRAITH
DIRECTOR OF INSURANCE

DATE: APRIL 13, 2009

RE: INDEXED ANNUITIES ARE SUBJECT TO STATE INSURANCE OVERSIGHT AND REGULATION

This bulletin clarifies that annuity contracts pursuant to which benefits are dependent upon the performance of a securities or other index have been, are, and will continue to be, regulated by the Illinois Division of Insurance as insurance contracts.

Annuity contracts are classified as insurance under Section 5/4, Class 1.(a) of the Illinois Insurance Code [215 ILCS 5/4, Class 1.(a)], and that section contains no exclusion for indexed annuities. Section 5/3M of the Illinois Securities Law of 1953 recognizes that such contracts are regulated as insurance by specifically exempting from that statute's notification filing requirements and various registration provisions "[a]ny security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state." 815 ILCS 5/3M. Whether an insurance producer selling indexed annuities has an alternative license does not modify, alter or otherwise change the meaning or application of these laws.

Indexed annuity contracts issued by companies licensed in Illinois are subject to all applicable provisions of the Illinois Insurance Code and its attendant regulations. Accordingly, the Illinois Division of Insurance will continue to regulate indexed annuity contracts and the Illinois-licensed companies issuing those contracts in the State of Illinois.

Appendix A