INTERPRETIVE RELEASE
Division of Securities
Kentucky Office of Financial Institutions
MISLEADING AND DECEPTIVE PRACTICES IN THE SALE OF EQUITY-INDEXED ANNUITIES ("EIAs") OR FIXED-INDEXED ANNUITIES

The "safe harbor" for equity-indexed annuities, also called fixed-indexed annuities, found in Regulation 230.151 promulgated by the Securities and Exchange Commission ("SEC") provides that the contract would not be a "security" under certain conditions including that …**(3) The contract is not marketed as an investment.** The Kentucky Division of Securities (Division") utilizes the same analysis in determining if the instrument will be deemed a "security" under Chapter 292 of the Kentucky Revised Statutes.

Use of certain phrases in connection with the promotion or sale of EIAs will be deemed by the Division to be attempts to market the products as investments, thereby violating the "safe harbor" requirements and bringing the products within the purview of securities regulation. Phrases such as "take advantage of market gains while avoiding market losses"; "grow with the stock market without risk"; "obtain competitive yield with minimal risk"; or substantially similar assertions are examples of language that the Division deems to subject the products to securities regulation. Additionally, any promotion referencing rates of return or comparing products to recognized financial instruments (CDs, mutual fund shares, etc.) would be viewed as promoting the product as an investment vehicle and therefore subject to securities regulation.

Furthermore, the Division will take the position that any person offering services such as "full financial review"; "asset analysis"; "estate planning"; or substantially similar financial services who is not registered as a broker-dealer, agent, investment adviser, or investment adviser representative will be deemed to be engaged in misleading and deceptive practices <u>unless the communication offering said services contains concomitant and equally conspicuous language that indicates that the person is licensed to sell only insurance products.</u>

Release Date: December 5, 2005
Effective Date: Immediately
Contact Person: Ronda Paul, Division of Securities