

Lawsuit Filed Against SEC Over New Annuities Regulation

WASHINGTON, DC, January 16, 2009 – A coalition of insurance companies and independent marketing organizations has filed suit in federal court to overturn Rule 151A, the newly published rule by the Securities and Exchange Commission that classifies indexed annuities as securities.

The suit was filed in the U.S. Court of Appeals for the District of Columbia Circuit, the court that typically hears cases about new agency regulations. It is the court that invalidated the SEC's hedge fund registration rule and twice rejected the Commission's mutual fund governance rule. The petitioners are represented by Eugene Scalia of Gibson Dunn & Crutcher LLP, which handled the mutual fund governance litigation against the SEC.

Indexed annuities are annuities that offer minimum guaranteed values and credit interest based on the performance of a market index such as the S&P 500. Because the purchaser is guaranteed the return of his or her principal with interest, subject to any surrender charges, indexed annuities are considered safer than securities products, which expose principal to market fluctuations.

Rule 151A was published in the Federal Register on January 16, 2009 and suit was filed the same day.

The petitioners' lawyer, Eugene Scalia, commented: "The securities laws say explicitly that annuities are to be regulated by the States, not the SEC. Unfortunately, the Commission engaged in a flawed rulemaking process whose result is a rule that conflicts with Congress's intent and with two Supreme Court decisions."

Jim Poolman, spokesperson for the Coalition for Indexed Products and former North Dakota Insurance Commissioner, noted that the SEC has decided to regulate indexed annuities at a time when the Commission has other pressing priorities. "It is unfortunate that the SEC seeks to duplicate state efforts to regulate indexed products when at the same time it has come under heavy criticism for failing to adequately meet its core mandate of overseeing the securities industry," he said.

In adopting the rule, the Commission retreated from initial suggestions that there were significant abuses in the sale of indexed annuities, and said that "the presence or absence of sales practice abuses is irrelevant" to its decision to adopt the rule. The regulation was appropriate, it said, "without regard to whether there is a single documented incident of abuse." The Commission conceded that the rule might cost insurance companies \$100 million in the first year alone, but declined to give "comprehensive consideration" to whether existing state regulation was sufficient to protect consumers. The National

Association of Insurance Commissioners and state insurance legislators opposed the rule.

In a letter to SEC Chairman Chris Cox, 19 members of Congress warned that the rule would "reduce product availability and consumer choice" and "effectively [place] the cost of the regulation squarely on the shoulders of consumers." Coalition spokesman Jim Poolman added: "It is ironic that indexed annuities have fared so much better during the recent financial crisis than securities products, and yet the SEC now wants to regulate indexed annuities, even though nobody lost a dime on indexed annuities as a result of the market meltdown."

The petitioners in the case are: American Equity Investment Life Insurance Company, BHC Marketing, Midland National Life Insurance Company, National Western Life Insurance Company, OM Financial Life Insurance Company, and Tucker Advisory Group.

A Press Kit providing background on fixed indexed annuities and this litigation is attached for reference.

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