



DATE: May 15, 2009
TO: All American Equity NMO's & Agents
FROM: Nick Gerhart, VP of Compliance Communications
RE: Update on SEC Rule 151A Oral Arguments

INFORMATIONAL UPDATE...PLEASE READ

American Equity attended the oral arguments on SEC Rule 151A on May 8, 2009. The Ceremonial Courtroom was near standing room only for the arguments. The Coalition for Indexed Products (Coalition) spent months working with counsel to prepare the legal challenge to SEC Rule 151A. The oral arguments went well from our perspective and we wanted to take the time to update our producers.

In December 2008 the SEC finalized Rule 151A seeking to clarify that fixed index annuities are securities and would need to be registered after January 12, 2011. The Coalition filed the petition to challenge Rule 151A to overturn the rule on the day the rule was filed in the Federal Register. The Coalition motioned to have the matter put on a fast track and the motion was granted. The National Association of Insurance Commissioners (NAIC) filed its own petition supporting the overturn of Rule 151A and that suit was consolidated with the Coalition case. The NAIC participated in the oral arguments.

The focus of the oral argument for both the Coalition and SEC was around the concept of investment risk. The Coalition believes the SEC is taking a view on investment risk that is unsupported by case law. The SEC argues that the agency is authorized to interpret what is investment risk. The SEC argued the risk of earning excess interest above the minimum guarantee is enough risk to the purchaser to require the product to be registered.

Eugene Scalia represented the Coalition during the oral argument. Mr. Scalia did a tremendous job articulating our steadfast position that FIA's are insurance products and not securities. He made it clear that the SEC is going to extraordinary steps to redefine investment risk, which historically has been defined as risk of losing principal and not the risk of gain. Michael Conley represented the SEC at the oral argument. He argued on behalf of the SEC that FIA's carry substantial investment risk for the consumer because the purchaser may or may not earn interest above the contractual minimum guarantee. Both Judge Ginsburg and Chief Judge Sentelle asked Mr. Conley questions that suggested they were skeptical of the SEC's position regarding this definition of investment risk.

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While we believe the oral arguments went well, we do not know how the Court will rule or when the Court will issue its ruling. The outcome could be any of the following:

- Vacate Rule 151A. This is what the Coalition is ultimately hoping it accomplished. This would invalidate Rule 151A and the SEC would have to start the entire process over to move forward.
- Uphold Rule 151A. The effective date would stand and we would have to be in compliance by January 12, 2011.
- Remand back to the SEC. The Court would effectively rule that the process was flawed and that the SEC did not adequately consider the economic impact. The SEC would be granted the opportunity to correct the flaws in the rulemaking process.

The Court's ruling may be appealed by either party to the U.S. Supreme Court. Whether the U.S. Supreme Court would hear the matter is unknown.

Regardless of the ruling by the Court, the Coalition is working with NAFA to overturn SEC Rule 151A through the legislative process. The Coalition and NAFA are supporting the Meeks-Price Bill that will likely be introduced to Congress this week. That bill has nineteen original co-sponsors (both Democrat and Republican) as of today. We will be asking our agents to contact their local member of Congress and ask them to support this bill. Once the bill is introduced and has a bill number we will be contacting you. In the meantime you can go to www.sec151a.com for more information on our legislative efforts and for the tools you need to contact your members of Congress.

As always, thank you for your continued support and business.