

DATE: December 10, 2009
TO: All American Equity NMO's & Agents
FROM: Nick Gerhart, Vice President of Compliance Communication
RE: SEC Rule 151A Litigation Update

IMPORTANT INFORMATION.PLEASE READ CAREFULLY

American Equity is updating all interested parties on the recent developments concerning the litigation with the SEC over SEC Rule 151A. On December 8, 2009, the SEC filed its supplemental brief to the industry brief regarding what the appropriate remedy should be over SEC Rule 151A. In their supplemental brief the SEC agreed to a two year delay on the effective date for Rule 151A. The delay will run from the date of publication of the reissued or retained Rule 151A in the Federal Register.

The SEC also states in its supplemental brief that it has taken initial steps toward completing a Section 2 (b) analysis. That analysis considers the rules impact on efficiency, competition and capital formation. The Court will now rule on these briefs.

Where are we now?

Now we are waiting for the Court to rule on the briefs before it. We do not know what the outcome will be or when we will get a ruling. The Court has a few options at this time. The Court may vacate SEC Rule 151A, or the Court may leave SEC Rule 151A on remand at the SEC and formalize the two year delay of the effective date put forward by the SEC in its supplemental brief. We cannot predict what the Court will do.

What is the SEC going to do?

Assuming the Court does not vacate SEC Rule 151A, we know that the SEC will have to take some action to continue with Rule 151A. After reading the SEC supplemental brief it appears they are beginning to do a Section 2(b) analysis and that the SEC staff will make a recommendation to the SEC Commissioners in the Spring of 2010 on further action of Rule 151A. If the SEC continues to proceed with Rule 151A we believe that a new notice and comment period will be opened and that all interested parties will have an opportunity to file comments. Once that process is done the SEC will take those comments into consideration and either make changes to the rule or adopt the rule. If it is adopted at that time it would eventually be published in the Federal Register. The industry would then evaluate its legal rights and recourse again.

If the Court vacates SEC Rule 151A we cannot predict what the SEC will do. They may drop Rule 151A entirely or they may start promulgating a new rule.

What is the industry doing?

We are still moving ahead with our legislative efforts. We have 11 Senators co-sponsoring S. 1389 and we have over 60 U.S. Representatives co-sponsoring H.R. 2733. We still need you to work on recruiting your Representatives and Senators to co-sponsor these important bills to permanently clarify that fixed

index annuities are insurance products.

We are also waiting to hear how the Court will rule on the briefs before it. Unfortunately, we cannot predict when or how the Court will rule. We remain very committed to fighting Rule 151A. We stand behind our steadfast belief that Rule 151A is misguided, and that our products are not securities. Therefore, we will continue our fight against SEC 151A in the Courts and will keep up our legislative efforts. Please do all you can do to help the industry with our legislative efforts.

We will update everyone as necessary.

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