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## ***The SEC's Annuity Smackdown***

The agency fails in its latest lunge for power.

The 2,300-page financial regulation bill that President Obama signed yesterday includes vast new powers for the Securities and Exchange Commission, including at least 95 separate new rule-makings. So it's probably too much to ask that the SEC learn from its latest legal humiliation, but we can always hope.

This particular illegal SEC land grab began in 2008, when then chief Christopher Cox announced his agency would regulate fixed indexed annuities. These niche products, like traditional annuities, guarantee buyers a return of their principal and a certain level of interest. The bonus is that they also earn interest on the upside performance of stock or bond indexes. If the S&P 500 goes up, the annuity holders profit. If it falls, investors still get their principal and interest.

Fixed indexed annuities have long been treated as insurance products, subject to strict state insurance regulation. Yet Mr. Cox and his merry band argued that these annuity products ought to be considered "securities" (and thus under SEC purview) because they involve market "risk." Never mind that the only risk to investors is that they might make more money than expected.

The SEC's rule, which passed in December 2008 on a 4-1 vote, required annuities to be registered with the SEC and sold by registered broker-dealers, rather than insurance agents. This was a slap at state insurance commissioners, particularly because the SEC couldn't provide a legitimate reason that states should be robbed of their regulatory authority. A coalition of insurance commissioners sued, as did the insurance industry. Current SEC chief Mary Schapiro could have pulled the plug at that point, but true to her history she plowed ahead in court. (See our editorial, "The SEC's Annuity Grab," March 7, 2009.)

Lo, the D.C. Circuit Court of Appeals last week threw out the rule in its entirety, noting it was arbitrary and capricious given existing state oversight. And in case the SEC didn't take that hint, Congress included a provision in the new financial regulation bill that more or less bars the agency from regulating these products. Even Democrats decided this SEC power grab would serve no purpose other than to make fixed indexed annuities more expensive, and cost their home state insurance industries jobs.

This kind of illegal overreach has become a pattern at the SEC, which once had a reputation as one of the most professional federal regulators. Over the last

decade, however, the courts have repeatedly slapped down the agency for exceeding its authority under the law. This has occurred even as it has failed miserably in its core mission of protecting investors from the likes of Bernie Madoff and Alan Stanford.

In the Washington way, Congress has now rewarded these failures with even more power, and Ms. Schapiro said on Tuesday that she'll need to hire at least 800 people to implement and enforce the agency's new orders. What Congress should consider instead is some mechanism for punishing an agency when it exceeds its authority and is rebuked in court. Loss of funding is the only discipline SEC regulators might understand.