



BREAKING NEWS

NAFA: Rule 151A Bill Is Coming

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WASHINGTON -- The National Association for Fixed Annuities says it will work to keep equity indexed annuities state-regulated by working with Congress as well as by going to court.

Danette Kennedy, government relations chair for NAFA, Milwaukee, talked about the two-pronged strategy here today at the group's 2009 annual meeting.

Attendees were talking about reports that Reps. Greg Meeks, D-N.Y., and Tom Price, R-Ga., have agreed to co-sponsor a bill stating that equity indexed annuities are exempt from regulation by the U.S. Securities and Exchange Commission.

NAFA is seeking a legislative solution as well as a legal solution to ensure that, even if the industry wins the court case, it can "shut down the possibility" that the SEC will seek to assert jurisdiction over EIAs on other grounds in the future, Kennedy said.

Conference attendees plan to visit their members of Congress today to seek more co-sponsors for the bill, according to Malatt Nyhart, executive vice president of Great America Insurance Company, Cincinnati, and chairman of NAFA.

Price has not yet introduced the bill, but he expressed support for the industry's position on EIA jurisdiction, saying the EIA bill would be a "commonsense bill."

Price said EIA products are "regulated appropriately at the state level," which, he said, is "more dynamic and more friendly to people."

Price, Meeks and NAFA members are reacting to Rule 151A, a regulation the SEC approved in January.

If implemented as approved, the rule would classify some EIA products as securities starting Jan. 12, 2011. The rule would impose SEC oversight on the products classified as annuities and pre-empt state regulation of the products.

A 3-judge panel of the U.S. Court of Appeals for the D.C. Circuit is scheduled to start hearing oral arguments tomorrow on American Equity Investment Life Insurance Company et al. vs. SEC, No. 09-1021, a suit that challenges Rule 151A.

The case panel is expected to include Chief Judge David Sentelle, and Judges Douglas Ginsburg and Judith Rogers.

The plaintiffs in the case include the National Association of Insurance Commissioners, Kansas City, Mo., as well as NAFA member companies.

At the NAFA meeting, Price said the SEC's argument that it can regulate EIAs as securities because that course of action "is not unambiguously precluded" by Section 3(a)(8) of the Securities Act of 1933 is a violation of the 10th amendment.

The 10th amendment provides "that powers not granted to the national government nor prohibited to the states are reserved to the states or the people."

The Meeks-Price bill would nullify Rule 151A and clarify that Section 3 (a)(8), the exception that reserves to the states regulation of fixed annuities, governs EIAs, Price said.

It "will be difficult to get the SEC rule overturned, but that doesn't mean that it shouldn't be tried," Price said.

James Poolman, spokesman for the Coalition for Indexed Products, Des Moines, Iowa, said at the NAFA meeting that the SEC regulation is the result of an "overreach" by the agency.

The move to approve the regulation was a "late hour decision" by the SEC as the Bush administration wound down, "made in the dark of night," Poolman said.

The SEC received more than 4,800 comment letters regarding the rule, and more than 90% of the commentators expressed opposition, Poolman said.

"States have regulated these products since their inception," Poolman said.

He cited the National Association of Insurance Commissioners' suitability model, which governs sales of EIAs, and said that 37 states have adopted the model law.

"More than 90% of the companies selling EIAs comply with the rule, even in states where it has not been adopted."

In adopting the rule, he said, "the SEC ignored the will of consumer and the NAIC."

Poolman also criticized the North American Securities Administrators' Association, Washington, which supported the SEC rule in a friend-of-the-court brief.

"The NASAA acted despite the fact that some state insurance regulators also serve as the securities regulators for their states and criticized the decision," Poolman said. "The NASAA arguments are suspect."

Poolman said he expects the NAIC to “raise the suitability bar” through another model law, predicting that the new model will call for more education for consumers’ about all financial products.