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Indexed annuities as securities? Not until 2013, says the SEC

Commission pushes back effective date of Rule 151A by two years; regulator to study the issue some more

By **Darla Mercado**
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Insurers claimed a small victory in the indexed-annuities war, as the SEC said it will delay by two years the effective date of a proposed rule that would make the products securities.

In a Dec. 8 filing with the U.S. Court of Appeals for the District of Columbia Circuit, the Securities and Exchange Commission said it would put a two-year stay on the effective date of Rule 151A.

Prior to the SEC's concession, the rule would have been effective for products sold on or after Jan. 12, 2011.

Currently, the securities regulator is embroiled in a case against American Equity Investment Life Insurance Co., Midland National Life Insurance Co. and a handful of other life insurers and independent marketing organizations. The insurers sued the regulator in January to keep the SEC from implementing the rule.

The SEC's concession is in response to a petition filed by Old Mutual Financial Life Insurance Co., in which the company asked for a delay on the effective date of the rule while the regulator conducts an analysis of how 151A would affect competition and capital formation.

The SEC also said that it has been working on the analysis of the rule and that its staff would come up with a recommendation next spring, according to the regulator's legal brief.

Eugene Scalia, a partner with Gibson Dunn & Crutcher LLP and the attorney representing American Equity and the other insurers in the case, noted that the SEC's brief shows why vacating Rule 151A would be the right thing for the appeals court to do.

"The SEC doesn't identify harm from vacating the rule," Mr. Scalia said. "They indicate that they're amenable to the rule not being effective for a lengthy period of time."

"The brief also says that this is a process the SEC expects to take into the spring and that its staff believes notice and comment will be necessary if they readopted it," he added. "That indicates that vacating is the proper remedy."

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