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BREAKING NEWS

SEC Offers To Delay 151A Implementation

- By ARTHUR D. POSTAL Published 12/9/2009

WASHINGTON BUREAU -- The U.S. Securities and Exchange Commission now plans to provide a full 2-year implementation period for federal regulation of equity-indexed annuities under Rule 151A.

The implementation period would begin after a final rule was issued, the SEC says in a court brief filed with the U.S. Court of Appeals for the D.C. Circuit.

The SEC also SEC has agreed through its court brief to open a Section 2(a) comment period on the SEC's Section 2(b) analysis of the likely effects of Rule 151A. Section 2(b) of the federal Securities and Exchange Act of 1933 requires the SEC to include an analysis of how a new rule might affect efficiency, capital formation and competition when it releases a draft of the proposed rule.

Remanding Rule 151A back to the SEC without vacating it "is the most equitable and appropriate remedy in this case," the SEC says in the brief.

The SEC's move to offer a 2-year implementation period is "a positive development," says Frederick Bellamy, a lawyer who is representing Old Mutual Financial Life Insurance Company, Baltimore, a unit of Old Mutual P.L.C., London.

But Bellamy says the SEC decision to open the Section 2(a) comment period could make it harder for opponents of federal regulation of indexed annuities to challenge the Section 2(b) analysis for Rule 151A

Old Mutual "will continue all efforts on all fronts to defeat the rule," Bellamy says.

Bellamy is a partner at Sutherland, Asbill and Brennan, Washington.

Old Mutual prompted the SEC brief by asking the D.C. Court panel to make the SEC give indexed annuity issuers more time to comply with Rule 151A.

Back in January, when the SEC decided to make Rule 151A a final rule, it said the rule would take effect in January 2011.

The indexed annuity industry soon filed a suit -- *American Equity Investment Life Insurance Company, et al, vs. the Securities and Exchange Commission,* Number 09-1021 – with the D.C. Circuit Court of Appeals in an effort to challenge the rule.

In July, the D.C. appeals court panel considering *American Equity* sent Rule 151A back to the SEC for further action. The panel cited deficiencies in the SEC's Section 2(b) analysis as a reason for the ruling.

Old Mutual later asked the panel to consider delaying implementation of Rule 151A for 2 years because of the need for better Section 2(b) analysis.

The panel responded by asking the parties in the case to brief the panel on whether implementation of 151A should be delayed beyond January 2011, and also on the issue of whether the rule should be vacated based on “the SEC's failure to properly consider the effect of Rule 151A upon efficiency, competition, and capital formation.”

Old Mutual argued in a brief filed Nov. 24 that vacating the rule and requiring the SEC to start all over again was the proper course.

Eric Marhoun, Old Mutual’s chief legal counsel, has welcomed the 2-year implementation stay that the SEC has proposed in the new brief.

The SEC “seems to recognize that a minimum of 2 years is necessary to implement any rule should they choose to proceed,” Marhoun says.

But “we are hopeful that the court will vacate the rule ultimately based on the petition, which is the question before the court,” Marhoun says.

Old Mutual also hopes the SEC will conclude that the rule is not justified, Marhoun says.