

## SEC Presses for 151A But Offers 2-Year Stay

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The Securities & Exchange Commission plans to reissue Rule 151A but it has offered a two-year stay from the time the rule would be published, according to a court filing.

The SEC is asking a federal appeals court not to strike down the rule that would give the agency authority over indexed annuities. The agency said in a court brief filed on Tuesday that it can satisfy the court's concerns in its initial ruling that the SEC was "arbitrary and capricious" in its Section 2(b) analysis of Rule 151A's impact. That analysis considers the rule's impact on efficiency, competition and capital formation.

The District of Columbia circuit court ruled on July 21 in the lawsuit American Equity Life Insurance Co. vs. the Securities & Exchange Commission that the SEC was correct that the agency could assert regulatory authority over indexed annuities but the SEC had failed to do a proper Section 2(b) analysis. When the SEC did not respond to the ruling, one of the litigants, Old Mutual, filed a request to stay the rule until the whole matter was settled. The rule is set to go into effect Jan. 12, 2011, and the industry would not have enough time to prepare for the rule if it is successfully reissued, Old Mutual argued.

But the court went a step further and asked Old Mutual and the SEC to submit suggested remedies, including tossing it altogether.

In Old Mutual's brief, filed Nov. 23, the company said the court should toss the rule because the rule would not withstand a proper Section 2(b) analysis. But Old Mutual also said if the rule is reissued it should be delayed two years before implementation. The SEC agreed to that second point in its answer.

Advantage Group Associates CEO Sheryl Moore said the ruling is welcome but the industry still needs to look to a more decisive win.

"This is a victory for the indexed annuity industry, albeit a minor victory," Moore said. "With at least 37 months until rule 151A is to go into effect, we need to be channeling all of our efforts on gaining Congressional support of HR 2733 and S 1389."

Those bills pending in the U.S. Senate and the House of Representatives would keep the regulation of indexed annuities under the states' purview.

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