



Momentum Builds to Kill Indexed Annuity Rule

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Members of the U.S. Senate have joined their House counterparts by introducing a companion bill that would nullify a controversial SEC rule that allows the agency to regulate indexed annuities.

The SEC sparked sharp criticism from state insurance regulators and indexed annuity providers when it adopted Rule 151A in January, which would give it regulatory oversight of a product that had traditionally been under the jurisdiction of state regulators.

In addition to dueling legislation in the House and the Senate, the rule has spawned a lawsuit, which was filed by state regulators and indexed annuity providers in the U.S. Court of Appeals for the District of Columbia.

The bill introduced by Senator Ben Nelson (D-Neb.), is similar to the House bill and states that Rule 151A “interferes with state insurance regulation, harms the insurance industry, reduces competition, restricts consumer choice, creates unnecessary and excessive regulatory burdens, and diverts Commission resources, all of which outweighs any perceived benefits.”

How indexed annuities are sold, especially to senior citizens, has generated regulatory scrutiny in recent years. The products can be especially attractive in turbulent markets because they provide some of the upside of a market index while also guaranteeing the contract owner a minimum fixed return. But the SEC and the Financial Industry Regulatory Authority (Finra) issued warnings to investors that those guarantees are not always ironclad.

But now political momentum is building to kill the rule. Eric

Marhoun, general counsel of Old Mutual Financial Insurance Company, says the Senate bill adds “fuel to the fire,” as the Securities and Exchange Commission is being challenged in court over its jurisdiction of indexed annuities.

“It shows there is concern in both houses that Rule 151A is an ill-advised rule,” Marhoun says.

Congressional members have expressed dismay over Rule 151A in earlier comment letters, but the Senate bill advances the political opposition over federal regulation of indexed annuities in what opponents say should remain a state-regulated product.

“The SEC is asserting jurisdiction, but if the statute is revised to clarify the SEC has no jurisdiction, that will be the end of that,” says Diane Ambler, partner at K&L Gates. “If the law changes, [the SEC is] responsible for enforcing those changes.”

The SEC declined to comment on the Senate bill, which is co-sponsored by Senators Saxby Chambliss (R-Ga.), Tom Harkin (D-Iowa) and Sam Brownback (R-Kan.). Rep. Gregory Meeks (D-N.Y.) was joined by 18 other congressional representatives on the House bill.

The companion bills also come as the SEC continues to fight battles on several fronts and can ill afford to expend resources on what many critics say was a priority of former SEC chairman Christopher Cox. It was Cox who led the effort to have the SEC regulate indexed annuities over concerns about how the complex products were being sold.

The House and Senate bills show that lawmakers believe “states have effectively regulated the product and that the SEC erred in passing the rule,” says Jim Poolman, a former insurance commissioner in North Dakota and spokesman for the Coalition for Indexed Products.

Robert Kurucz, partner with Goodwin Procter, says regulators’ interest in how indexed annuities are sold is important. But measured against more pressing issues the agency now faces and the fact that there is regulation of the product on the state level, “it seems not to be the wisest investment... at the moment,” he says.

“I just think given everything else at stake, this was a fight not worth picking at this juncture in history,” Kurucz says.