

More on 151A

Uncertain Times for Indexed Annuities

BY KRISTIN SHEPARD

The SEC's newly-adopted Rule 151A will require most current forms of indexed annuities to be registered under the Securities Act of 1933, if those forms continue to be issued on or after January 12, 2011 (see also *Spotlight on 151A* on page 2). Though the SEC intends its new Rule to provide "increased regulatory certainty to insurance companies that issue indexed annuities and the distributors who sell them," the Rule raises many questions for issuers and distributors of these products.

The unanswered questions include:

1. What are the implications of Rule 151A for other insurance products with indexed-linked returns? For example, the SEC stated that, although Rule 151A does not apply to indexed life insurance policies, the "considerations that form the basis for Rule 151A are also relevant in analyzing indexed life insurance because indexed life insurance and indexed annuities share certain features (e.g., securities-linked returns)."
2. Will FINRA develop a new license series, examination and set of training materials tailored for indexed annuity salespersons?
3. What are the civil litigation implications of the SEC's position that indexed annuity policy forms issued on or after January 12, 2011 suddenly become securities even if the same form of indexed annuity was offered and sold on an unregistered basis prior to that date? On the one hand, the SEC maintains that nothing in its release adopting the rule is intended to affect the current analysis of the legal status of indexed annuities until the effective date of Rule 151A and that, in the meantime, offers and sales of unregistered indexed annuities will not be impacted by the pendency of the rule. However, the SEC also acknowledges that "if the status of a form of contract under the federal securities laws were to change, over time, from exempt to non-exempt and vice versa, this would present practical difficulties...as well as heightened litigation and enforcement risk."
4. Will the SEC and FINRA succeed in tailoring disclosure requirements for indexed annuities to avoid conflicts with or duplication of the myriad existing disclosure requirements mandated under state insurance and consumer protection laws?

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