



SEC Breaks Six-Month Silence on Rule 151A

On Friday, June 18, 2010, the SEC broke its six-month silence on Rule 151A with a [filing](#) with the U.S. Court of Appeals for the District of Columbia Circuit in the pending litigation.

The filing was titled "Status Report" and advised the Court that "there have been Congressional proposals that could significantly affect Rule 151A." Specifically, the Report referred to, and attached a copy of, an amendment to the Wall Street Reform and Consumer Protection Act (H.R. 4173) proposed on June 17 that would exempt index insurance and annuities from the Securities Act of 1933.

That amendment was approved last evening by the Senate conferees on H.R. 4173 and is expected to be considered by the House conferees soon.

Almost a year ago, the Court had [held](#), on July 21, 2009, that the SEC's determination that certain index annuities are non-exempt securities was reasonable. However, the Court had concluded that the SEC had erred by not assessing existing state insurance law in considering whether Rule 151A would promote efficiency, competition and capital formation under Section 2(b) of the Securities Act. Several months later, the SEC, on [December 8, 2009](#), told the Court that its "staff is diligently addressing the Section 2(b) deficiencies the Court identified" and that the SEC expected to consider a staff recommendation "in the Spring of 2010."

Spring ended June 20. So, there had been some expectation that the SEC might advise the Court where the SEC stood in its assessment under Section 2(b) of the Securities Act.

If you have questions, please contact Gary Cohen at (202) 965-8152 or goc@jordenusa.com or Kristin Shepard at (202) 965-8129 or kas@jordenusa.com.

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