



Rule 151A Vacated

On July 12, 2010, the U.S. Court of Appeals for the D.C. Circuit entered an [Amended Judgment](#), [Order](#) and [Reissued Opinion](#) vacating Rule 151A as a result of the SEC's "arbitrary and capricious" failure to perform the required Section 2(b) analysis of the effect of the Rule on efficiency, competition, and capital formation. The Court found that vacatur - as opposed to a stay - of the Rule was the appropriate remedy because:

- the SEC had yet to complete the promised Section 2(b) analysis (which it had previously indicated that the staff would provide to the Commission in Spring of 2010), so the Court had no evidence that the analysis would support reissuance of the Rule; *and*
- vacatur would not disrupt the SEC's regulatory program because Rule 151A had not yet gone into effect.

Although the Order references the SEC's expressed intent to reissue Rule 151A (either in its original form or revised form) once it has performed the required Section 2(b) analysis, any such efforts may be mooted by currently pending legislation. The Dodd-Frank Wall Street Reform and Consumer Protection Act - passed last week by the House of Representatives and expected to be voted on by the Senate as early as this week - mandates that the SEC treat fixed indexed products (and certain other non-separate account insurance products) as exempt from securities regulation under Section 3(a)(8) of the 1933 Act, provided, in short, that certain insurance nonforfeiture laws and customer suitability standards are satisfied.

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