



**SEC Proposed Rule 151A  
Status Update!**

## **Old Mutual Continues to Work in Opposition to SEC RULE 151A**

The SEC's re-opened comment period for opposition to proposed Rule 151A expired on November 17<sup>th</sup>. Old Mutual submitted a substantive supplemental comment letter challenging the proposed rule on several fronts, including risks to eligibility under Guaranty Funds with respect to FIAs and refuting claims made by defenders of the proposed regulation. Detailed information regarding empirical data on experience, applicant demographics and likely impacts of the proposed ruling was provided to SEC Commissioner, Kathleen Casey and her staff, following a meeting between the commission and Old Mutual's general counsel, Eric Marhoun last October.

To date, 21 Members of the U.S. House of Representatives have submitted letters opposing the proposal and requesting that the SEC withdraw the rule. In fact, the Congressional Opposition Letter and comments from Eric were featured in an article published on December on the financial news web site – Ignites.com. Old Mutual continues to partner with the Coalition for Indexed Products, which continues to actively oppose the proposed rule.

A copy of the Ignites.com article is attached for your reference.



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## Lawmakers Step Up Opposition to SEC Proposal

Article published on December 3, 2008

By Peter Ortiz

A group of congressional members ratcheted up their opposition to an SEC rule proposal on index annuities that would give it regulatory oversight of the products.

A Nov. 17 letter released by the office of Rep. Gregory Meeks (D-N.Y.) and signed by 18 other congressional representatives questioned the agency's ability to handle another regulatory task on top of the ongoing financial crisis.

In a previous letter dated Aug. 22, many of the same members had requested an extended comment period for the proposal, which the agency did grant. But in addition to their original criticism, which suggested the regulator was overstepping its regulatory authority, the lawmakers took aim at the agency's ability to do its job. Two other congressional representatives recently filed separate comments, also in opposition of the proposal.

The comment period for the proposal closed November 17. It is not clear at this point whether the SEC will act on the rule proposal before the end of the year.

The letter from the 19 congressional members questions how the SEC would handle the added burden of overseeing these products. The letter asks, "Would the Division of Investment Management and/or the Division of Enforcement require additional funding...? If not, how would the SEC provide additional oversight of these products? If so, would this distract from the SEC's current focus on dealing with the mortgage-related crisis in the financial markets?"

An SEC spokesman would not comment on the questions raised in the letter and said the

views expressed in the comment period “will be carefully considered.”

Eric Marhoun, general counsel of Old Mutual Financial Life Insurance Company, does not believe the SEC is up to the task. “The SEC thinks in terms of market loss and investment risk and this is part of the reason why the SEC is ill-suited to regulate pure insurance products such as indexed annuities.”

Tom Gorman, partner at Porter Wright Morris & Arthur, says the congressional members’ most recent letter is clearly “drawing a regulatory line in the sand,” with the members objecting to federal regulation of a product they deem to be sufficiently regulated by the states.

Some see the battle between lawmakers and the SEC as a precursor to much bigger regulatory turf wars in 2009 with the financial crisis serving as the catalyst.

“I think this is a mini version of numerous turf battles that will take place as to the proper scheme of regulation,” says Robert Kurucz, partner Morrison & Foerster.

Supporters of the proposal, including the Investment Company Institute and several firms that sell variable annuities, commented that the SEC is well justified in regulating indexed annuities. The SEC and the Financial Industry Regulatory Authority have been critical of how indexed annuities are sold, warning investors that the product’s guarantees are not foolproof.

A host of variable annuity providers including Axa Equitable Life Insurance, Hartford Financial Services Group, Massachusetts Mutual Life Insurance, MetLife and New York Life Insurance, filed a joint letter through Diane Ambler, partner at K&L Gates. In it she noted that SEC oversight is warranted given the fact that indexed annuities “are complex and profoundly confusing to unsophisticated investors.”

Ambler tells Ignites that the congressional members’ concern about the SEC’s ability to regulate index annuities during this economic crisis is “a bit of a stretch.” She notes that the Supreme Court had determined that insurance products can be subject to SEC jurisdiction and that the agency already has the structure to regulate such products, as demonstrated with variable annuities.

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