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Pressure Builds for SEC to Scrap Indexed Annuity Rule

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Indexed annuity providers are renewing their fight to kill an SEC rule after the agency agreed in December to delay implementing the controversial measure.

Old Mutual Financial Life Insurance Company last week filed a [brief](#) arguing that the U.S. Court of Appeals for the District of Columbia should vacate Rule 151A, which deems indexed annuities to be securities and gives the Securities and Exchange Commission regulatory control over the product. The brief is the latest chapter in an ongoing saga that pits federal regulators against state regulators in a fight over who oversees a product that has traditionally been regulated by states. Despite the SEC's agreement to delay implementation of the rule for two years to address deficiencies, there has been fierce industry and political criticism as well as a lawsuit to overturn the rule.

"A remand of Rule 151A — which would leave the Rule in legal limbo — would continue to suggest to... the indexed annuity industry that the Rule likely will be readopted," the Old Mutual brief reads. That state of limbo is leading the industry to incur costs in tailoring their products in anticipation of a rule that would upend how the product is regulated, supporters say.

An SEC spokesman offered no comment about the Old Mutual brief but said staff continues to work on the rule.

The SEC has maintained confidence in the rule and cites the appeals court's decision to uphold Rule 151A last summer in the case of *American Equity Life v. SEC*. That ruling, however, also called for the SEC to offer an explanation of the rule's economic implications or show why that explanation was not necessary.

In response to the ruling, Old Mutual filed a petition in September seeking a two-year delay of the rule's effective date of Jan. 12, 2011. The SEC responded that a delay was not necessary, but industry lawyers say it failed to make clear how the rule would address the industry's concerns. The court also expressed concern, and in November indicated that it was considering vacating the rule because of the agency's "failure to consider the effect of Rule 151A upon efficiency, competition and capital formation."

With the prospect of the court's vacating its measure, the SEC filed a brief in December agreeing to set back the effective date of Rule 151A from 2011 to 2013 and to reissue the rule and seek comment. In January the court then ordered Old Mutual to respond, leading up to last week's brief, in which it expressed doubt the SEC could resolve

deficiencies and instead called for the rule to be trashed altogether.

"The fact that the SEC in its supplemental brief recognizes it has major, substantive work to do, we think, reinforces the appropriateness of vacating the rule while the SEC determines what it will ultimately do," says Old Mutual's chief legal counsel, Eric Marhoun.

Others say relying on the courts is not good enough. They say they are hoping for legislative action. The fact remains that the court has already acknowledged that the SEC has authority to regulate indexed annuities as securities and that it can raise issues in the future even if it decides not to pursue the rule now, says Sheryl Moore, president and CEO of **Annuity Specs.com**, a research firm.

"What we want is for somebody to say [indexed annuities] are insurance products, not securities," Moore says.

Moore supports bills in the House and Senate that would define indexed annuities as insurance products, but says legislators have been bogged down in health care. [Research](#) conducted by Moore's firm shows that if adopted, the economic impact of Rule 151A on the industry would be more than \$2.2 billion annually, she says.

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