

ARTICLE: “It's Right for the SEC to Regulate Annuity Products”

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BYLINE: Former SEC Chairman, Christopher Cox

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ORIGINAL ARTICLE CAN BE FOUND AT:

<http://online.wsj.com/article/SB10001424052748703294904575385432046465758.html#articleTabs%3Dcomments>

The following comment was posted on www.wsj.com in response to the Letter to the Editor below and submitted as its own Letter to the Editor:

Dear Christopher Cox,

I am sorry to say that you are misinformed on indexed annuities, as many of your securities cohorts are. I do not blame you, as the misinformation in the media is astronomical.

The D.C. Circuit Court of Appeals found that the Securities and Exchange Commission's interpretation of 'annuity contract' was reasonable under *Chevron*, but that **the SEC failed to properly consider the effect of Rule 151A upon efficiency, competition and capital formation** [as required by section 2(b) of the Act].

Furthermore, the Court vacated Rule 151A because the SEC's section 2(b) analysis was 'arbitrary and capricious.' So, while it is true that the court found SEC's interpretation of 'annuity contract' to be reasonable, they also found that SEC didn't do all the work necessary to prove that they were in a position to regulate indexed annuities as securities.

You are right that the Court gave the SEC the opportunity to remedy their non-compliance with administrative procedures. However, **the SEC did not remedy it**. Did you ever consider that regulating indexed annuities as securities WOULD NOT improve competition, capital formation, and efficiency in this market? It wouldn't; in fact the threat of securities regulation has had the exact opposite effect in this market.

The only risk one has with an indexed annuity IS making more money than expected. All annuity contracts have surrender charges where the client can receive less than their original deposit if they cash surrender in the early years of the contract. This "risk" is not something unique to indexed annuities and it is clearly disclosed in every annuity sales transaction.

While you are quick to allude that the SEC's "bipartisan commission" took 151A "seriously," you failed to recognize the others that took the issue seriously as well. You are able to claim the support of "provincial and territorial securities regulators in North America and others," but you are not able to say that someone NOT vested in indexed annuities being regulated as securities

lent support to the SEC's position. Only securities regulators who would gain with additional responsibilities and fees, insurance companies that sell products competing against indexed annuities, and a trade group of companies that sell mutual funds (which also compete for the same retirement dollars as indexed annuities). Astoundingly, those supporting the insurance industry in their efforts to secure the fixed insurance status of indexed annuities include:

1. Insurance companies (both those who do and do not sell indexed annuities)
2. Insurance regulators
3. Marketing organizations and broker dealers
4. Trade groups
5. 80.44% of those who submitted the 4,448 comments on 151A
6. The D.C. Circuit Court of Appeals
7. Congress
8. People who own indexed annuities

It is scary to me that a person who once-held a position as high as Commissioner of the SEC could have the facts so wrong about a retirement product. Indexed annuities do not have "huge" penalties. There are indexed annuities with surrender charges as short as three years. The average first-year penalty (which declines thereafter) on indexed annuities is a mere 10.61%. Every indexed annuity allows 10% of the annuity's value to be withdrawn without penalties on an annual basis; some allow as much as 50% to be withdrawn in a single year! Plus, 9 out of 10 indexed annuities provide a waiver of the surrender charges, should the annuitant need access to their money in events such as nursing home confinement, terminal illness, disability, and even unemployment. Consider the fact that these products pay the full account value to the beneficiary upon death, and I think that you'll see that consumers have tremendous ability to "get their money when they need it" with indexed annuities. These are some of the most liquid retirement income products available today!

You fail to realize that the insurance commissioners and insurance companies that allow insurance agents to be licensed and contracted to sell indexed annuities do not allow those "convicted of criminal securities fraud" and other similar situations to obtain such licensing/contracting to do so. Insurance regulation is different, Mr. Cox- it isn't inferior! The National Association of Insurance Commissioners (NAIC) does all of the regulatory work that the Financial Industry Regulatory Authority performs and then some (including insurer solvency, which so many think is their sole responsibility). The NAIC also has strict regulations on product disclosure, antifraud, suitability, market conduct, standard non-forfeiture values, advertising guidelines, and more. The states hold the authority to take sanctions against insurance agents including, but not limited to, license revocation, penalties and fines. Have you also considered that insurance purchasers do not need to go through lengthy arbitration, spend money, and wait for an extended period to have their complaints addressed? The insurance division intervenes on behalf of the consumer at no charge. I just hope that you can be open to learning more about regulation on the insurance side; it is most definitely different than what you perceive it to be.

If you take away all of the misinformation that has been perpetuated in the media for years about these products, and the misperception that a lack of FINRA on the insurance side is equivalent to a lack of regulation, I think that you can see that indexed annuities are so different than you think

they are. These misperceptions continued for years until they resulted in the SEC stepping-in to take control of a product which was already adequately controlled. As a result, my firm has been working to correct all of the misinformation in the media about these products and we have made tremendous inroads with reporters and securities entities (if you recall, I am the one who presented you with the actual data on indexed annuity complaints, illuminating the fact that unsuitable sales of these products were not a problem like the SEC thought they were).

In turn, I would like to offer that if I can ever assist you in your understanding about these valuable insurance products, please do not hesitate to contact me. I am always happy to share the facts about indexed annuities, be it good or bad, with anyone who is curious. Thank you.

Sheryl J. Moore

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