



Field
Update



July 23, 2009

Aviva responds to U.S. Court of Appeals ruling on Rule 151A

On Tuesday, July 21, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision in the litigation challenging Rule 151A. Although the court determined that the SEC was within its statutory authority in issuing Rule 151A, it found that the SEC's analysis supporting the rulemaking was inadequate and remanded Rule 151A back to the SEC for further analysis. Specifically, the court asked the SEC to analyze how the rule will impact competition and the sufficiency of investor protections under existing state regulation. Under the decision, Rule 151A cannot take effect unless and until the SEC completes the required additional analysis.

The lawsuit was filed in January by a coalition of insurance companies and independent marketing organizations. The lawsuit alleged that the SEC engaged in flawed rulemaking and exceeded its authority by adopting the rule. The lawsuit also claimed that the rule is at odds with Congressional intent and prior U.S. Supreme Court precedent.

Aviva USA has been working with the Coalition of Indexed Annuity Carriers in opposition of the rule since it was originally proposed. While Aviva USA was not a named party in the litigation, the company supports the coalition's efforts and believes that judicial review was appropriate under the circumstances.

"Aviva believes fixed indexed annuities are insurance products that are effectively governed by state insurance regulators – and should not be subject to SEC regulation. We support this coalition in its reasoning for the suit, which raised legitimate concerns about the rule," said Mark Heitz, President, Sales and Distribution. "While we oppose the rule, our plans have not altered. Aviva is prepared for the changes that would result if the SEC decides to proceed with Rule 151A that would require registration of FIAs as securities. Further, our product development team continues to update our portfolio of traditional annuities to ensure that FIAs and traditional annuities continue to be available to our customers and producers, no matter what the outcome."

FIAs are valuable products that fill an important financial need for many consumers. Today's extremely volatile markets underscore the growing demand for such a product. Throughout this process, it has been Aviva's goal to ensure an effective outcome for its valued distribution partners and policyowners.

Potential Outcomes

We believe that the court's decision means the SEC likely would have a considerable amount of work to do to correct the defects in its supporting analysis and it is unclear how long that process would take if the SEC decides to pursue it.

It is possible that the SEC will conclude that the rule is no longer a pressing priority and decide to indefinitely abandon it. On the other hand, it is also possible the SEC will diligently work to prepare and reissue an updated analysis of the rule's impact on competition, efficiency and capital formation. We believe that any updated analysis completed by the SEC may also be subjected to judicial review, as well as open for industry comment.

FIAs are currently not required to be registered with the SEC and all of Aviva's distribution partners can continue to offer FIAs to suitable clients. We will continue to keep you up to date on the status SEC Rule 151A. We also will continue to update you on training and support opportunities, as well as on further additions to our annuity portfolio.

Thank You

We appreciate your efforts throughout this process. Further, we thank you for your ongoing support of, and commitment to, Aviva USA. We look forward to continued success throughout 2009.