

# **Indexed Annuities' Battle with SEC Comes to An End**

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Article by Sheryl J. Moore



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On July 21, 2010, a long and hard-fought battle with securities regulators was finally won by the insurance industry. After being under question for 13 years, the securities status of indexed annuities was finally and indefinitely settled when President Barack Obama signed the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The month of July was particularly victorious for the insurance industry, as the District of Columbia U.S. Court of Appeals vacated the Securities and Exchange Commission's (SEC) Rule 151A just nine days prior. Although the court's actions were considered a victory for the insurance industry, it did not assure that the SEC would not question the securities status of indexed annuities again sometime in the future. Fortunately, Senator Tom Harkin (D-IA) submitted a Congressional amendment to the Dodd-Frank Act to ensure that indexed annuities would continue to be regulated as fixed insurance products permanently. Therefore, the insurance industry has prevailed in a struggle that they have fought since 1997.

### **Overview**

Indexed annuities (IAs) were first introduced to the insurance market February 5, 1995. This variation of the fixed annuity has been regulated as a fixed insurance product since that time. However, many have questioned whether the indexed annuity should be regulated as a security since its introduction. The SEC first questioned the securities status of IAs in 1997. The National Association of Securities Dealers (NASD) suggested that the products be treated as securities in 2005. The SEC then declared that indexed annuities would be regulated as securities in 2008. Ultimately, an act of Congress settled the matter, ensuring that indexed annuities would continue to be regulated as fixed insurance products.

### **A Big Thank You**

Sheryl Moore, President and CEO of AnnuitySpecs.com had this to say, "This is absolutely fabulous; such a relief! I couldn't be happier."

When I left the home office in 2005 to start this company, and increase awareness of indexed annuities and indexed UL, I had no idea the battle I was getting into. I believe in indexed annuities, heart, mind, and soul- this victory means so much to me and my staff! I want to thank the insurance companies that worked nonstop, to ensure that these products would not become securities. To the AMOs/FMOs/IMOs of the insurance market- THANK YOU! We couldn't have done it without your "skin in the game!" To the wonderful agents that sell indexed insurance products- my heartfelt gratitude for your calls, emails, and personal visits to legislators. To the insurance regulators of the National Association of Insurance Commissioners (NAIC), my sincerest thanks for your hard work on this issue! I would also like to personally show appreciation to every member of Congress that supported S1389, HR2733, and the Harkin Amendment; thank you so much for your leadership.

AnnuitySpecs.com's staff has worked day and night to ensure the fixed insurance status of indexed annuities for five long years, but it was most definitely a team effort! THANK YOU SO MUCH TO ALL!"

### **Timeline**

**1997** – Securities and Exchange Commission first questions the securities status of indexed annuities

**August 2005** – The National Association of Securities Dealers [now known as the Financial Industry Regulatory Authority (FINRA)] issues Notice to Members 05-50, asserting that member firms treat indexed annuities as if they are securities

**June 25, 2008**- The Securities and Exchange proposes Rule 151A, suggesting that indexed annuities be regulated as securities, and opens their original comment period for the rule

**September 10, 2008**- The SEC closes the initial comment period for Rule 151A

**October 10, 2008**- The SEC reopens the comment period for Rule 151A due to an outcry from the insurance industry, regulators, and legislators

**November 10, 2008**- The SEC closes the second and final comment period for Rule 151A after receiving 4,448 comments on the rule, 80.44% of which opposed the rule

**December 17, 2008**- The SEC adopts Rule 151A with minor modifications in a 4 – 1 vote, with an effective date of January 12, 2011

**January 16, 2009** – A coalition of insurance companies and marketing organizations file suit against the SEC for Rule 151A in *American Equity Investment life Insurance Company, et al., v. Securities and Exchange Commission*

**January 20, 2009** – Christopher Cox resigns as chairman of the SEC

**January 27, 2009** - Mary Shapiro, former head of FINRA, is appointed SEC chairman by President Obama

**March 20, 2009** – House Bill 2733, the *Indexed Annuities and Insurance Products Classification Act of 2009*, introduced to Congress to “undo” Rule 151A

**June 26, 2009** – Matching Senate Bill 1389 introduced

**July 21, 2009** – District of Columbia U.S. Court of Appeals says SEC failed to rigorously analyze the impact of Rule 151A and tells SEC that they need to prove Rule 151A would improve competition, capital formation, and efficiency

**December 9, 2009** – SEC agrees to a two-year stay of Rule 151A

**February 5, 2010** – Old Mutual files a brief, requesting that the District of Columbia U.S. Court of Appeals vacate Rule 151A

**June 23, 2010** – Senate conferees approve an amendment to the *Dodd-Frank Wall Street Reform and Consumer Protection Act* which would exempt indexed annuities from SEC regulation

**July 12, 2010** – The District of Columbia U.S. Court of Appeals vacates Rule 151A

**July 16, 2010** – The Senate votes to pass the *Dodd-Frank Wall Street Reform and Consumer Protection Act*

**July 21, 2010** – President Barack Obama signs the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, thereby ensuring that indexed annuities are indefinitely regulated as insurance products

For more information go to [www.IndexedAnnuityNerd.com](http://www.IndexedAnnuityNerd.com).

The staff at **AnnuitySpecs.com**, and **LifeSpecs.com** have over a decade of experience working with indexed products. They provide services in speaking, research, training, product development, and marketing of indexed products. Their knowledge in product filing research and policy forms analysis gives them the expertise to provide competitive intelligence that allows carriers to stay ahead of their competitors.

**Sheryl J. Moore** is president and CEO of this specialized third-party market research firm and the guiding force behind the industry’s most comprehensive indexed life and indexed annuity due diligence tools, AnnuitySpecs.com and LifeSpecs.com. Ms. Moore previously worked as market research analyst for top carriers in the indexed life and annuity industries. Her views on the direction on the indexed market are frequently heard in seminars and quoted by industry trade journals. She is the author of the quarterly *AnnuitySpecs.com’s Indexed Sales & Market Report*.

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