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Another Perspective:

NAFA's 151A "Fly-In" Makes Progress

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Editor's Note: This Another Perspective article is part of a new Insurance Compliance Insight feature about insurance matters of interest to the compliance community written by outside contributors. If you, your company, or your organization would like to provide a commentary, write to editor Alan Prochoroff at aprochoroff@ins-compliance.com or call 571-216-3385.

by Cailie Currin

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Proponents of the repeal of SEC Rule 151A made incremental progress this week in an effort to exempt fixed indexed annuities from regulation as securities. That much was clear following a March 17 "fly-in" to Washington, D.C., organized by the National Association of Fixed Annuities and others looking to pass federal legislation that would prevent promulgation of Rule 151A by the SEC.

Court action has led to a delay in implementation of the rule to at least 2013, but no final resolution, leaving the question of future SEC regulation of indexed annuities in limbo.

The fly-in sought to garner support for H.R.2733 and S. 1389, which have languished this session as congressional attention has been elsewhere. The bills would create another exemption in the Securities Act of 1933 for any insurance or endowment policy or annuity contractor optional annuity contract:

- whose value does not vary according to the performance of a separate account; and
- which satisfies standard nonforfeiture laws or similar requirements of the applicable state, territory, or District of Columbia at time of issue, with provision for looking to NAIC models if the state has no applicable nonforfeiture law.

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Cailie A. Currin, JD, and her staff of professionals has extensive and unique experience in life insurance and annuity compliance, with an emphasis on product drafting, review and submission for state approval. Currin has been a New York State Insurance Department regulator, an in-house compliance attorney at a major life insurer, and a law firm partner where her practice focused exclusively on insurance compliance issues. She and her staff provide quality services to the life insurance and annuity industry and assist life companies and other law firms on insurance regulatory issues. The CCS staff regularly reviews life insurance and annuity products for compliance with state and federal law, and prepares single, interstate compact and multiple state filings, paper or SERFF. Currin provides expert advice on the various filing options available and helps drive products through the approval process once a filing method has been selected, working with clients to respond to any questions or objections raised by regulators. A significant and growing part of Currin's consulting is assisting companies with the post-approval review process as the New York State Insurance Department focuses more of its attention on that method of regulation. Currin Compliance Services understands the demands of the industry and has the skills and commitment to meet them.

The bills further declare without force or effect Rule 151A promulgated by the SEC on last year, which had extended SEC jurisdiction over indexed annuities as securities.

About 100 individuals were present for the fly-in, including West Virginia commissioner and NAIC president Jane Cline and several other commissioners. Sen. Ben Nelson, D-Neb., gave a kick-off breakfast speech for participants before they set out individually and in small groups.

Those visits with legislators and their aides reportedly focused on the job losses likely to result from Rule 151A, that this issue isn't related to "systemic risk" and that the products themselves—indexed annuities—are generally good products that offer meaningful guarantees.

The arguments were enough to persuade at least one lawmaker, Rep. John Shadegg, R-Ariz., to sign up as a new co-sponsor of the legislation.

Sen. Christopher Dodd, D-Conn., is reportedly considering including the measures in his huge financial services reform package. While that bill is certain to be hotly debated and amended, it is a major priority for the Obama administration and congressional Democrats, so HR2733/S1389 would seem to have a greater chance of passage as part of the package than as a stand-alone measure.

This week there was incremental forward movement made in the effort to secure passage of legislation to exempt fixed indexed annuities from regulation as securities, but there is still a long way to go. Legislative attention is generally elsewhere, and it will be necessary to continually remind lawmakers on Capitol Hill of this issue for real progress towards passage to be made. Another fly-in, surgically focused on key senators and representatives, may be necessary.

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Cailie Currin is an attorney and president of Currin Compliance Services, LLC. She and her staff offer consulting and training to her insurance company clients on a wide variety of compliance matters. Look for her in April at the Insurance Advertising Compliance Association where she will be speaking about preparing for and handling market conduct examinations. She will also be at the AICP New England Chapter's Education Day in May, where she will conduct a workshop on Suitability and participate on a panel regarding the many insurance compliance issues raised by Non-Traditional Unions.



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