CARLTON FIELDS

Federal Regulation of Fixed Equity Indexed Annuities Redux?

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When SEC Commissioner Luis A. Aguilar recently cited "the need for the Commission and state regulators to focus on combating fraud involving complex securities" including "equity-indexed annuities," he did not discuss specific details concerning indexed annuities. It is, therefore, unclear whether he advocates for enhanced state regulation or, less likely, a Commission effort to obtain Congressional authority for federal regulation. The obstacles to federal reform include the so-called Harkin amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which effectively bars federal regulation of indexed annuities. One year prior, the U.S. Court of Appeals for the District of Columbia vacated SEC Rule 151A, intended to regulate indexed annuities, on procedural, not substantive, grounds. Commissioner Aguilar's statement was made in an address at a North American Securities Administrators Association conference in April. The SEC's liaison to the Association, Commissioner Aguilar focused on "complex securities," which he defined to include "securities that often involve embedded derivatives and may include equity-indexed annuities, leveraged and inverse exchange-traded funds (ETFs), principal protected notes, and reverse convertibles," as well as "exchange-traded products … and alternative mutual funds." The Commissioner observed that "given the low interest environment that's been prevalent these past years, many investors" are "more likely to chase yield by buying investments touting higher returns." He warned that "these investment products can be very opaque and complex for retail investors to fully appreciate the risks involved" and that these investors "become easy prey for fraudulent schemes that are cloaked as investments in complex securities."

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