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Aviva USA Position Paper – Rule 151A

U.S. Court of Appeals Sends Rule 151A Back to SEC

Background:

On Tuesday, July 21, 2009, 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 or explain why such analysis is not required. Under the decision, Rule 151A cannot take effect unless and until the SEC completes the required additional analysis. The lawsuit was filed in January 2009 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's Position on Rule 151A:

- **Aviva USA has been working with the Coalition of Indexed Annuity Carriers in opposition of Rule 151A since it was originally proposed.** While Aviva USA was not a named party in the litigation, we support the Coalition's efforts and believe that judicial review was appropriate under the circumstances.
- **Aviva believes Fixed Indexed Annuities (FIAs) 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.
- **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.
- **Fixed indexed annuities 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 our valued distribution partners and policyowners.

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