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THE WALL STREET JOURNAL

WSJ.com

REVIEW & OUTLOOK | MARCH 7, 2009

The SEC's Annuity Grab

Mary Schapiro should stop the SEC's latest lunge for power.

An eternal Washington truth is that the more a federal agency gets beat up for regulatory failures, the more of the world it attempts to regulate. Witness the Securities and Exchange Commission, which has responded to recent criticism with a dubious power grab over another industry.

This particular overreach is aimed at fixed indexed annuities, a niche in the wider annuity market. Like traditional annuities, purchasers of the fixed index variety are guaranteed the return of their principal and a certain level of interest. The twist is that they also earn interest based on the upside performance of stock or bond indexes, say, the S&P 500. If the market goes up, investors get more. If it goes down, investors still get their principal and minimum interest.

Whatever their merits, these annuities have always been treated as insurance products, subject to myriad state rules that govern their marketing and sale, and the capital requirements of insurers. While the 1933 securities act gave the SEC the power to regulate securities, it exempted annuities.

Until last year, that is, when then SEC chief Christopher Cox announced his agency would regulate fixed indexed annuities. At the time, he claimed there were widespread sales abuses and that he was stepping up to protect senior citizens. Mr. Cox argued these annuities were "securities" that could be regulated by the SEC because they were tied to indexes and thus involved "risk."

This didn't go down well with state insurance commissioners, who explained their oversight and dared the agency to prove its sales abuse claims. The SEC couldn't do so, and by rule-writing time it was admitting that "the presence or absence of sales practice abuses is irrelevant." All that mattered was the risk: Specifically, the SEC claimed the risk to the annuity purchaser was that the market would rise, and that he'd get *more than his minimum guarantee*. In the age of Bernie Madoff, the SEC is thus putting itself on high alert to protect people whose only risk is making more money than they expect.

A coalition of insurers filed suit to block the proposed SEC rule in D.C. Circuit Court last month and has been granted expedited review. The National Association of Insurance Commissioners joined the legal fun this week. The suits note that a federal court has specifically ruled that these products are annuities, not securities. They also point out that the SEC has been negligent in considering the burden of its new rule, which by the agency's own admission will cost insurers \$100 million in the first-year alone. In his blunt dissent to the rule, SEC Commissioner Troy Paredes noted the SEC was "entering into a realm that Congress prohibited us from entering" and would hurt small businesses and consumers.

This kind of regulatory wanderlust is all too typical of the modern SEC, which was once known as a cautious regulator but now looks for ever more financial land to grab. Never mind that the Madoff debacle, which followed the mutual fund late-trading fiasco, shows that the SEC can't properly supervise its current turf. There's a case to be made for national insurance regulation, including annuities, but the place to make that case is Congress. New SEC Chairman Mary Schapiro won't help investors or the

reputation of her agency by continuing this legally suspect lunge for more power.

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