

Illinois Supreme Court Nails Down Status in Big Market: Indexed Annuities Are Not Securities

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In *Van Dyke v. White*, the Illinois Supreme Court has held that fixed indexed annuities are not securities under Illinois law.

The decision is significant because it:

- reverses a decision of the Illinois securities department that indexed annuities were securities in an agent disciplinary proceeding; and
- establishes legal certainty on this point for sales in Illinois, which is said to be the third-largest state retirement market.

Illinois securities law defines “security” to include a “face amount certificate,” and defines “face amount certificate” to include “any form of annuity contract (other than an annuity contract issued by a life insurance company authorized to transact business in this State).” The Illinois Securities Department agreed that the fixed indexed annuities in the case were not securities under this provision.

However, the Illinois Securities Department found the fixed indexed annuities to constitute “investment contracts” under the Illinois definition of “security.” The department argued that the provision was “patterned after” the definition of “security” in the Securities Act of 1933 and, therefore, had to be construed along the lines of the U.S. Supreme Court decisions that found variable annuities to be investment contracts and a U.S. court of appeals decision that, in effect, found the SEC could reasonably determine fixed indexed annuities to be investment contracts.

In *Van Dyke*, the Illinois Supreme Court ruled against the Illinois Securities Department based, in short, on the ground that the specific definition of “face amount certificate” took precedence over the “general descriptive designation” of “investment contract.”

Carlton Fields filed an amicus brief on behalf of the American Council of Life Insurers urging the *Van Dyke* court to hold that fixed indexed annuities were not securities under Illinois law. For additional information about the lower court rulings in this and a related case, see “Illinois Courts: Fixed Indexed Annuities Are Not Securities,” *Expect Focus – Life Insurance*, Vol. III (Oct. 2016).

Authored By



Gary O. Cohen

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