




## Gary O. Cohen

OF COUNSEL

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## Overview

Gary Cohen practices in the area of federal securities law, focusing on SEC regulation of investment companies and their investment advisers, distributors, and other service providers. He has extensive experience in matters regarding mutual funds, including the representation of independent directors and trustees.

Gary also has extensive experience in SEC regulation of variable annuities and variable life insurance and the life insurance company separate accounts that fund them. He was an official of the Securities and Exchange Commission (SEC) when the U.S. Supreme Court held that variable annuities were subject to SEC jurisdiction, and he participated in the development of the SEC's regulatory regime. In private practice, he represented the life insurance industry in lengthy proceedings that led to the SEC's adoption of exemptive rules for variable life insurance, and he prepared the first several registration statements that the SEC declared effective for variable life insurance. The National Association for Variable Annuities has hailed Gary as one of the "recognized experts who helped to build this industry."

Gary has spoken at, and published papers for, more than 90 legal programs, including the ICI-FBA Conference on Mutual Funds and Investment Management Conference, the PLI Investment Management Institute, and the ALI-ABA Conference on Life Insurance Company Products. He has spoken at SEC staff continuing education sessions and served as a guest lecturer at the Georgetown University Law Center. He has published more than 20 law review and legal periodical articles and has testified more than once in federal court as an expert witness.

Gary worked for five years at the SEC in Washington, D.C., where he served as assistant chief counsel of the Division of Investment Management, the division that regulates investment companies, investment advisers, and life insurance companies separate accounts.

## Experience

- Represents mutual funds, including those underlying separate accounts, before the SEC in preparing and filing registration statements and post-effective amendments, reports, exemptive applications, proxy statements, pre-filing conference requests, no-action letter requests, responses to inspection deficiency letters, responses to requests for documents and information, and legal opinions.
- Represents mutual fund independent directors and trustees in fulfilling their fiduciary duties under the Investment Company Act of 1940, including attend board meetings and executive sessions.
- Represents life insurance companies issuing variable annuities and variable life insurance and maintaining separate accounts before the SEC in matters involving the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940, including obtain exemptive and other relief for innovative products, features, and charges.
- Provided legal opinions to life insurance company that their products qualify as insurance, and not securities, under the Securities Act of 1933 and the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- Served as expert witness, and prepare amicus curiae briefs, in litigation brought against life insurance companies under the federal securities laws. *Prusky v. Prudential Ins. Co.* (E.D. Pa.) (testified in two separate lawsuits that Prudential won in 2001 and 2008); amicus curiae brief filed in *American Equity Investment Life Insurance Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010).
- Represented life insurance industry and mutual fund trade associations in rulemaking and exemptive application proceedings before the SEC. American Council of Life Insurers predecessors, Rulemaking Proceeding Concerning Variable Life Insurance (SEC File No. 4-149).

## Areas of Focus

### Practices

- [Financial Services Regulatory](#)
- [Securities Transactions and Compliance](#)
- [Life, Annuity, and Retirement Litigation](#)

### Industries

- [Securities & Investment Companies](#)
- [Life, Annuity, and Retirement Solutions](#)

# Insights

02.01.2024

Regulatory Monitor: SEC Update

*The Investment Lawyer*

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01.11.2024

NASAA Report on BD Compliance With Reg BI: Finds Progress, but Specifies Work To Be Done

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01.01.2024

Mixed Signals: SEC De-Emphasizes Disclosure of Section 15(c) Process While Deeming Process an Exam Priority and Considering New Fund Fee Disclosure Rule

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09.28.2023

SEC Folds on Swing Pricing for Money Market Funds: Odds Lengthen Against Swing Pricing for Other Fun

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08.01.2023

SEC Budget Request Seeks 170 New Staff Mainly for Enforcement and Rulemaking

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06.01.2023

SEC Releases Five-Year Strategic Plan

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05.02.2023

SEC's Controversial Fund Proxy Voting Disclosure Requirements Come into Play

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04.02.2023

SEC Adoption of Forward Pricing Rule 22c-1 -- Before Swing Pricing, There Was Backward and Forward Pricing of Mutual Fund Shares

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03.02.2023

SEC Probes Fund Section 15(c) Process

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02.16.2023

Increased Visibility Into Fund Proxy Voting: SEC Adopts Controversial Requirements

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11.03.2022

The Founding of the American Law Institute Conference on Life Insurance Company Products: 40 Year History

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09.08.2022

SEC Clobbers Crypto Lending Platform but Allows Some Retooling

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08.04.2022

SEC Budget Request Seeks 400 New Staff; More than Half for Enforcement and Examinations

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06.01.2022

Regulatory Monitor SEC Update

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05.18.2022

Duties and Non-Duties of Directors of Mutual Funds Underlying Life Insurance Company Separate Accounts Funding Variable Insurance Contracts

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05.11.2022

SEC Whistleblower Proposals Continue Reversal of Trump-Era Rules

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05.09.2022

SEC IM Division Director William Birdthistle's Mutual Fund Views Revealed in His Book

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01.11.2022

SEC Publishes Fund Compliance Shortfalls

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11.01.2021

SEC Chair Gensler's Mutual Fund Views Revealed in His Book

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10.01.2021

ICI 2021 Fact Book Illuminates Current SEC Issues

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09.16.2021

Possible SEC Proxy/Whistleblower Rule U-Turns? Could Reverse Trump-Era Actions

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09.16.2021

SEC Takes ESG Disclosure Plunge: An Ocean of Issues Swirls

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06.01.2021

Investor Advocate Rebukes SEC, Calls for Rule Reversals and Legislation

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05.05.2021

Converting Mutual Funds to ETFs: A Fertile Field?

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05.05.2021

Let a Thousand Flowers Bloom: Advisory Voices Proliferate at SEC

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05.01.2021

SEC's Fledgling Asset Management Advisory Committee Begins to Spread Its Wings

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05.01.2021

Regulatory Monitor: SEC Update

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12.15.2020

SEC Streamlines Fund of Fund Relief, Requires Life Company 'Certification'

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12.15.2020

Great-West Wins 36(b) Fee Case

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11.16.2020

SEC Proposes Big Changes to Mutual Fund Disclosure Framework

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09.03.2020

SEC Proposes Big Changes to Fund Disclosure

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09.03.2020

SEC Still Cool With Virtual Fund Board Meetings

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09.03.2020

Court Throws Cold Water on SEC Disgorgement Remedy

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08.18.2020

SEC Proposes Changes to Fund Shareholder Reports, Prospectuses, SAIs, and Ads

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08.15.2020

SEC Approves Summary Prospectuses, Layered Disclosure for Variable Insurance Contracts

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04.17.2020

Regulatory Monitor: SEC Update

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02.20.2020

Fund Advisers Face Another Class of Plaintiffs Bringing Section 36(b) Lawsuits

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02.06.2020

Second Circuit Opens Door to Lawsuits Based on Contract Violating 1940 Act

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11.27.2019

Covering Legal and Regulatory Issues of Asset Management

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10.04.2019

New SEC Regulation Defines 'Best Interest' Flexibly

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07.11.2019

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

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06.20.2019

SEC Proposes Summary Prospectus for Variable Insurance Products

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04.04.2019

FINRA Trumpets Variable Annuity Sales Problems While SEC Falls Silent

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12.18.2018

SEC Lightens Legal Load of Mutual Fund Directors

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11.10.2018

Mr. and Ms. 401(k) and the SEC Fund Retail Investor Experience Initiative

*The Investment Lawyer*

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10.01.2018

SEC 'Investor Experience Initiative' Expressly Includes Variable Insurance Products

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06.25.2018

Expect Slower SEC Processing of Investment Company Filings

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03.31.2018

SEC Targets Variable Insurance Products

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02.01.2018

Life Insurance Industry's 'SEC Wish List' for Trump's Tilt With the 'Nanny State' of Excessive Regulation

*The Investment Lawyer*

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12.29.2017

Treasury Department Urges SEC to Act on Life Company Products

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06.23.2017

FINRA Moves to Protect Seniors and Other Vulnerable Persons

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04.10.2017

Will New Administration Speed VA Summary Prospectus?

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12.22.2016

Court Upholds SEC on "Backtested" Investment Strategy Illustrations

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10.13.2016

SEC Exhibit Hyperlink Proposal Excludes Investment Companies

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05.01.2016

A Short Telling of the Wacky History of How the SEC Came to Regulate Life Insurance Company Separate Accounts and Products

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09.21.2015

Gatekeeper Liability of Inside Asset Management Attorneys "Appearing" Before the SEC

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06.15.2015

Federal Regulation of Fixed Equity Indexed Annuities Redux?

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06.15.2015

SEC Staff Ready to Recommend Variable Annuity Summary Prospectus

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12.01.2014

SEC Action on Variable Annuity Summary Prospectus Uncertain

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09.16.2014

SEC Again Delays Variable Annuity Summary Prospectus

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07.08.2014

Supreme Court Protects Whistleblowing Employees of Mutual Fund Adviser

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07.08.2014

New York Fines Two Major Insurers

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03.31.2014

FINRA Shuffles Comments on its “CARDS” Proposal

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12.01.2013

Supreme Court Considers Mutual Fund Whistleblowers

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05.09.2013

SEC Brings Action Against Independent Fund Trustees and Provides Gloss on Section 15(c) Process

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12.12.2012

SEC Charges Fund Independent Directors on Valuation of Portfolio Securities

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10.30.2012

SEC Guidance on Cyber Disclosure Becoming De Facto Rule?

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09.01.2011

SEC Financial Literacy Study: Wallop for Mutual Funds

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10.01.2009

Rule 151A Litigation and the Battle over Suitability Standards

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07.01.2009

Litigation to Overturn SEC Index Annuity Rule

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03.01.2008

Implications of Fund Summary Prospectus for Life Insurance Companies

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02.01.2008

Summary Versus Profile Prospectus Liability

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02.01.2007

Indexed Insurance Products: Are They Securities?

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01.01.2007

Fund Director Approval of Advisory Contracts: Shareholder Report Disclosure

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02.01.2006

Mutual Fund Disclosure Reform Through Electronic Means

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01.01.2006

Legal Standard for Fund Board's Approval of Advisory Contracts

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11.01.2005

Prospects for Mutual Fund Disclosure Reform

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10.01.2005

Compliance with SEC Requirements for Disclosing Fund Directors' Approval of Investment Advisory Contracts

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06.01.2005

SEC Examination for Culture of Compliance

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10.01.2004

New Disclosure Requirements for Directors' Basis for Approving Investment Advisory Contracts

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06.01.2004

Market Timing Litigation Under Variable Insurance Products

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# News

11.01.2021

Carlton Fields' Gary Cohen Authors Investment Lawyer Article on SEC Chair's Mutual Fund Views

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10.01.2021

Carlton Fields' Gary Cohen Authors Investment Lawyer Article on ICI's 2021 Fact Book

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02.09.2021

SEC Veteran William J. Kotapish Joins Carlton Fields; Bolsters Firm's Financial Services Regulatory Practice

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11.15.2020

Gary Cohen Authors Article in The Investment Lawyer on the SEC's Changes to Mutual Fund Disclosure Framework

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03.01.2020

Gary Cohen Authors Article in The Investment Lawyer on Section 36(b) Lawsuits

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11.01.2019

Gary Cohen Authors Article in The Investment Lawyer on SEC's Best Interest Rule

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08.01.2019

Variable Insurance Product Disclosure Reform: A Future-Proof Proposal?

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06.19.2019

SEC Proposes Summary Prospectus for Variable Insurance Products

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11.01.2018

After Years of Pressure, SEC Moves to Simplify Variable Annuity Disclosures

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09.01.2017

Going Public by Norm Champ: A Tell-Some Expose of 'Bureaucratic Warfare,' 'Bizarro Decisions,' and 'Political Hit Jobs' By a Former Director of the SEC's Division of Investment Management

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## Recognition

- AV Rated by Martindale-Hubbell
- Subject of one-person interviews in Fund Action and Fund Directions and quoted, over the years, in various financial publications

## Professional & Community Involvement

- American Bar Association
  - Subcommittee on Securities Activities of Insurance Companies
- Association of Life Insurance Counsel
- Insured Retirement Institute
  - Regulatory Affairs Committee
- Editorial Board of The Investment Lawyer
- SEC Historical Society

## Speaking Engagements

- "The Founding of the American Law Institute Conference on Life Insurance Company Products," ALI CLE Conference on Life Insurance Products, Washington, D.C. (November 3-4, 2022)
- "Mutual Funds and Advisers: Key Regulatory and Litigation Developments," ALI CLE Conference on Life Insurance Products, Washington, D.C. (November 6-8, 2019)
- "Investment Management: Insurance Products," PLI Investment Management Institute, New York, NY (March 21, 2019)
- "Mr. and Ms. 401(k) and the SEC Fund Retail Investor Experience Initiative," 36th Annual Advanced Conference on Life Insurance Company Products, Washington, D.C. (November 9, 2018)
- "Mutual Funds and Advisers: Key Regulatory and Litigation Developments," 36th Annual Advanced Conference on Life Insurance Company Products, Washington, D.C. (November 9, 2018)
- "SEC Wish List of Life Insurance Companies Under the Trump Administration," ALI CLE Conference on Life Insurance Company Products, Washington, D.C. (November 2, 2017)
- "Insurance Hot Topics," PLI Investment Management Institute, New York, NY (March 23, 2017)
- "Key Legal and Ethical Obligations in Marketing and Selling Insurance Products," ALI CLE Conference on Life Insurance Company Products, Washington, D.C. (November 2014)

- "Where Is the SEC Going?," ACLI Compliance and Legal Sections Annual Meeting 2014, Fort Lauderdale, FL (July 29, 2014)
- PLI Investment Management Institute (1998–present)
- ALI Conference on Life Insurance Company Products (1983–present)
- SEC Division of Investment Management Staff Training Program
- Guest Lecturer, Georgetown University Law Center

## Credentials

### Education

- Harvard Law School (J.D., 1963)
- Vanderbilt University (B.A., magna cum laude, 1959)
  - Phi Beta Kappa

### Bar Admissions

- District of Columbia