



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).

All Insights

07.11.2019	Illinois Supreme Court Nails Down Status in Big Market: Indexed Annuities Are Not Securities
06.19.2019	SEC Proposes Summary Prospectus for Variable Insurance Products <i>The Review of Securities & Commodities Regulation (PDF)</i>
04.04.2019	FINRA Trumpets Variable Annuity Sales Problems While SEC Falls Silent
12.18.2018	SEC Lightens Legal Load of Mutual Fund Directors
11.10.2018	Mr. and Ms. 401(k) and the SEC Fund Retail Investor Experience Initiative
10.01.2018	SEC 'Investor Experience Initiative' Expressly Includes Variable Insurance Products

06.24.2018 Expect Slower SEC Processing of Investment Company Filings

03.30.2018 SEC Targets Variable Insurance Products

01.31.2018 Life Insurance Industry's 'SEC Wish List' for Trump's Tilt with the
'Nanny State' of Excessive Regulation

12.28.2017 Treasury Department Urges SEC to Act on Life Company Products

09.22.2017 Going Public by Norm Champ: A Tell-Some Exposé of 'Bureaucratic
Warfare,' 'Bizarro Decisions' and 'Political Hit Jobs,' by a Former
Director of the SEC's Division of Investment Management

06.23.2017 FINRA Moves to Protect Seniors and Other Vulnerable Persons

04.09.2017 Will New Administration Speed VA Summary Prospectus?

12.21.2016 Court Upholds SEC on "Backtested" Investment Strategy
Illustrations

10.12.2016 SEC Exhibit Hyperlink Proposal Excludes Investment Companies

04.30.2016 A Short Telling of the Wacky History of How the SEC Came to
Regulate Life Insurance Company Separate Accounts and Products

09.20.2015 Gatekeeper Liability of Inside Asset Management Attorneys
"Appearing" Before the SEC

06.14.2015 Federal Regulation of Fixed Equity Indexed Annuities Redux?

06.14.2015 SEC Staff Ready to Recommend Variable Annuity Summary
Prospectus

12.01.2014 SEC Action on Variable Annuity Summary Prospectus Uncertain

09.15.2014 SEC Again Delays Variable Annuity Summary Prospectus

07.07.2014 New York Fines Two Major Insurers

07.07.2014 Supreme Court Protects Whistleblowing Employees of Mutual Fund
Adviser

03.30.2014 FINRA Shuffles Comments on its "CARDS" Proposal

11.30.2013	Supreme Court Considers Mutual Fund Whistleblowers
05.08.2013	SEC Brings Action Against Independent Fund Trustees and Provides Gloss on Section 15(c) Process
12.11.2012	SEC Charges Fund Independent Directors on Valuation of Portfolio Securities
10.30.2012	SEC Guidance on Cyber Disclosure Becoming De Facto Rule?
09.01.2011	SEC Financial Literacy Study: Wallop for Mutual Funds
10.01.2009	Rule 151A Litigation and the Battle over Suitability Standards
07.01.2009	Litigation to Overturn SEC Index Annuity Rule
03.01.2008	Implications of Fund Summary Prospectus for Life Insurance Companies
02.01.2008	Summary Versus Profile Prospectus Liability
02.01.2007	Indexed Insurance Products: Are They Securities?
01.01.2007	Fund Director Approval of Advisory Contracts: Shareholder Report Disclosure
02.01.2006	Mutual Fund Disclosure Reform Through Electronic Means
01.01.2006	Legal Standard for Fund Board's Approval of Advisory Contracts
11.01.2005	Prospects for Mutual Fund Disclosure Reform
10.01.2005	Compliance with SEC Requirements for Disclosing Fund Directors' Approval of Investment Advisory Contracts
06.01.2005	SEC Examination for Culture of Compliance
10.01.2004	New Disclosure Requirements for Directors' Basis for Approving Investment Advisory Contracts
06.01.2004	Market Timing Litigation Under Variable Insurance Products

08.01.2019	Variable Insurance Product Disclosure Reform: A Future-Proof Proposal?
06.19.2019	SEC Proposes Summary Prospectus for Variable Insurance Products
11.01.2018	After Years of Pressure, SEC Moves to Simplify Variable Annuity Disclosures
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

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
- SEC Historical Society

Professional & Community Involvement

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

Speaking Engagements

- "Investment Management: Insurance Products," Practising Law Institute, Investment Management Institute, New York (March 21, 2019).
- "Mr. and Ms. 401(k) and the SEC Fund Retail Investor Experience Initiative," 36th Annual Advanced ALI CLE Conference on Life Insurance Company Products, Washington (November 9, 2018).
- "Mutual Funds and Advisers: Key Regulatory and Litigation Developments," 36th Annual Advanced ALI CLE Conference on Life Insurance Company Products, Washington (November 9, 2018)..
- "SEC Wish List of Life Insurance Companies Under the Trump Administration," ALI CLE Conference on Life Insurance Company Products, Washington (November 2, 2017).
- "Insurance Hot Topics," PLI Investment Management Institute, New York (March 23, 2017).

- "Key Legal and Ethical Obligations in Marketing and Selling Insurance Products," ALI CLE Conference on Life Insurance Company Products, Washington (November 2014).
- "Where Is the SEC Going?" ACLI: Compliance & 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

Areas of Focus

PRACTICES

- Financial Services Regulatory
- Life, Annuity, and Retirement Litigation
- Life, Annuity, and Retirement Solutions
- Securities Transactions and Compliance

INDUSTRIES

- Securities & Investment Companies