



# NAFA<sup>®</sup>

NATIONAL ASSOCIATION FOR FIXED ANNUITIES

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## **NAFA Advocates Against Regulatory Overreach in SEC v. Cutter *Amicus* Filing**

### **Brief Seeks to Protect Fixed Annuity Industry and Its Customers**

**WASHINGTON** (Aug. 23, 2023) — NAFA, the National Association for Fixed Annuities, filed an *amicus curiae* brief today in the *Securities and Exchange Commission v. Cutter Financial Group, LLC and Jeffrey Cutter* lawsuit currently before the U.S. District Court for the District of Massachusetts. NAFA's brief was filed in support of the Defendants' Motion to Dismiss and urges the court to dismiss the SEC's allegations contained in its Amended Complaint against Mr. Cutter and his registered investment advisory firm, CFG, as it relates to the application of the Investment Advisers Act with respect to his and his RIA's sale of fixed indexed annuities.

NAFA's brief argues that the SEC's application of the Advisers Act on indexed annuity transactions (1) relies on a flawed and unsupported reading of the Advisers Act that is inconsistent with the framework of federal securities law as it relates to insurance versus securities matters; (2) contravenes the primacy accorded to state insurance regulation as established under the McCarran-Ferguson Act, the Dodd-Frank Act and numerous relevant Supreme Court decisions; (3) is unnecessary given the protection of consumers provided by extensive state regulation of insurance; (4) infringes upon the jurisdictional authority of state regulators to achieve a national best interest standard of conduct for annuity transactions; (5) runs afoul of the Major Questions Doctrine; and (6) injects needless uncertainty over disclosures and duties with respect to indexed annuity transactions.

"For years, our industry has faced significant threats to fixed indexed annuity distribution. In Mr. Cutter's case, the SEC's attempts at regulatory overreach simply go too far," said Chuck DiVencenzo, president and CEO of NAFA. "The sale of annuities is highly regulated through a robust state-based framework, with elevated consumer protections thanks to the continued adoption of the National Association of Insurance Commissioners' revised suitability rule, which holds annuity professionals to a best interest standard. The conflation of insurance and securities law only stands to undermine an effective regulatory regime that ensures consumer access to the products and professional advice Americans need to retire more securely."

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The SEC filed its complaint against Jeffrey Cutter and his advisory firm, Cutter Financial Group, on March 17 for "recommending that their advisory clients invest in insurance products that paid Cutter a substantial up-front commission without adequately disclosing Cutter's and CFG's financial incentive to sell the products."

The Defendants' Motion to Dismiss states otherwise, noting, "Defendants complied with SEC and insurance industry guidance when they disclosed the conflict of interest inherent when personnel of a registered investment adviser are separately licensed as insurance agents and sell commission-based insurance products to investment advisory clients."

NAFA strongly believes that were the SEC to prevail and their jurisdiction to expand over the sale of indexed annuities by individuals who hold both securities and insurance licenses, such overreach has the potential to significantly disrupt the fixed annuity marketplace and would harm NAFA member companies, their affiliated financial professionals, and the clients they serve.

"For more than two decades, NAFA and its membership have tirelessly worked to educate all stakeholders, including policymakers and regulators, about the value of fixed and fixed indexed annuities in a comprehensive plan for retirement while advocating for annuity protection," said DiVencenzo. "Our filing of this brief underscores our commitment to this mission and to ensure independent annuity distribution remains a vital part of the retirement planning marketplace for decades to come."

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### **About NAFA**

NAFA, the National Association for Fixed Annuities, is the premier trade association exclusively dedicated to fixed annuities. Our mission is to promote the awareness and understanding of fixed annuities. We educate annuity salespeople, regulators, legislators, journalists, and industry personnel about the value of fixed annuities and their benefits to consumers. NAFA was founded in 1998. For more information, visit [www.nafa.com](http://www.nafa.com).