

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN EQUITY INVESTMENT LIFE  
INSURANCE COMPANY, BHC MARKETING,  
MIDLAND NATIONAL LIFE INSURANCE  
COMPANY, NATIONAL WESTERN LIFE  
INSURANCE COMPANY, OM FINANCIAL LIFE  
INSURANCE COMPANY, AND TUCKER  
ADVISORY GROUP, INC.,

Petitioners,

v.

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION,

Respondent.

**PETITION FOR REVIEW**

Case No. 09-1021

The above named petitioners respectfully petition this Court, pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure, Section 9(a) of the Securities Act of 1933, 15 U.S.C. § 77i(a), and Section 706 of the Administrative Procedure Act, 5 U.S.C. § 706, for review of a final rule of the United States Securities and Exchange Commission providing that fixed indexed annuities (“FIAs”) are securities which must be registered, offered, and sold in accordance with the requirements of the Securities Act. The Commission adopted this rule (“Rule 151A”) at an Open Meeting on December 17, 2008. The final rule release, a copy of which is attached hereto, was published in the Federal Register on January 16, 2009. Indexed Annuities and Certain Other Insurance Contracts; Final Rule, 74 Fed. Reg. 3,138 (January 16, 2009).

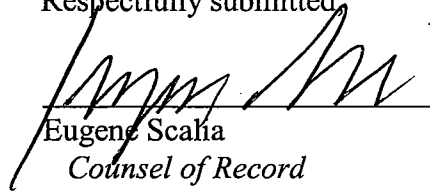
Petitioners ask this Court to hold the Commission’s rule unlawful under the Securities Act and Administrative Procedure Act, to vacate the rule and its requirements, to issue a

permanent injunction prohibiting the Commission from implementing and enforcing the requirements, and for such other relief as the Court deems appropriate.

If the Commission does not grant a stay of its action, a motion for expedited review will be filed shortly.

Dated: January 16, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eugene Scalia", is written over a horizontal line.

Eugene Scalia

*Counsel of Record*

Barry Goldsmith

Daniel J. Davis

GIBSON, DUNN & CRUTCHER LLP

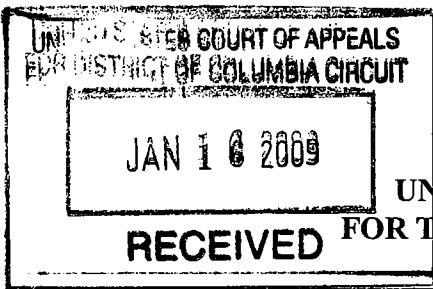
1050 Connecticut Ave., N.W.

Washington, D.C. 20036

Telephone: (202) 955-8500

Facsimile: (202) 467-0539

*Counsel for Petitioners*



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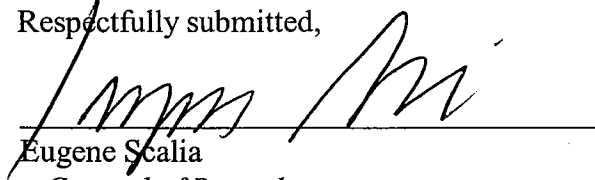
**CORPORATE DISCLOSURE STATEMENT OF  
AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY**

Pursuant to Circuit Rules 15(c)(3) and 26.1, Petitioner American Equity Investment Life Insurance Company (“American Equity”) states as follows:

1. American Equity is incorporated in Iowa.
2. All parent corporations and publicly held companies that own 10 percent or more of petitioner American Equity are as follows: American Equity is a wholly-owned subsidiary of American Equity Investment Life Holding Company.
3. American Equity is an insurance company that issues fixed indexed annuities which it expects to be required under Rule 151A to register with the Commission.

Dated: January 16, 2009

Respectfully submitted,



---

Eugene Scalia

*Counsel of Record*

Barry Goldsmith

Daniel J. Davis

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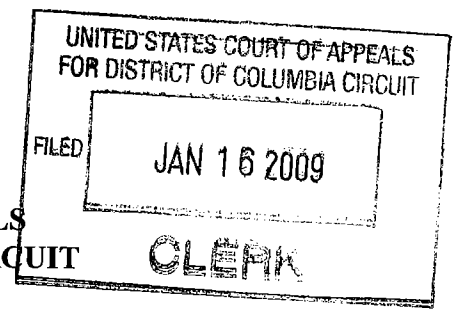
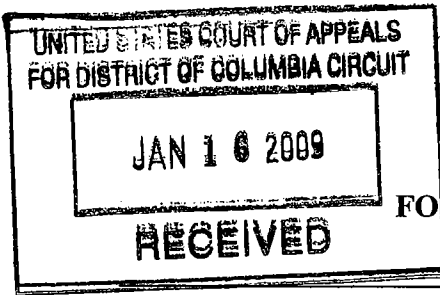
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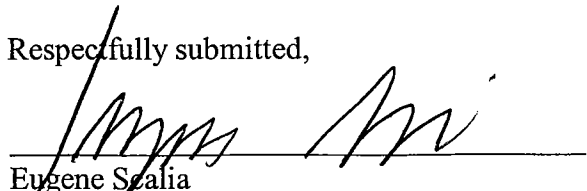
**CORPORATE DISCLOSURE STATEMENT OF  
MIDLAND NATIONAL LIFE INSURANCE COMPANY**

Pursuant to Circuit Rules 15(c)(3) and 26.1, Petitioner Midland National Life Insurance Company ("Midland National") states as follows:

1. Midland National is incorporated in Iowa.
2. All parent corporations and publicly held companies that own 10 percent or more of petitioner Midland National are as follows: Midland National is a wholly-owned subsidiary of Sammons Financial Group, Inc., which is a wholly-owned subsidiary of Consolidated Investment Services, Inc., which is a wholly-owned subsidiary of Sammons Enterprises, Inc.
3. Midland National is an insurance company that issues fixed indexed annuities which it expects to be required under Rule 151A to register with the Commission.

Dated: January 16, 2009

Respectfully submitted,



---

Eugene Scalia  
*Counsel of Record*

Barry Goldsmith

Daniel J. Davis

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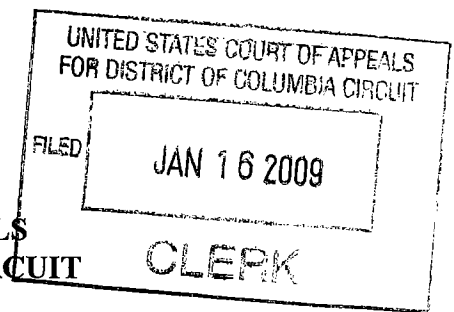
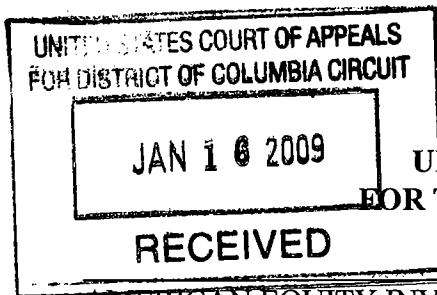
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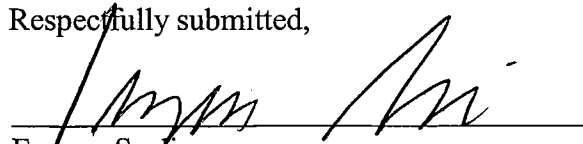
**CORPORATE DISCLOSURE STATEMENT OF  
NATIONAL WESTERN LIFE INSURANCE COMPANY**

Pursuant to Circuit Rules 15(c)(3) and 26.1, Petitioner National Western Life Insurance Company ("National Western") states as follows:

1. National Western is incorporated in Colorado.
2. All parent corporations and publicly held companies that own 10 percent or more of petitioner National Western are as follows: National Western has no parent companies and no publicly-held corporations that hold 10% or more of National Western stock.
3. National Western is an insurance company that issues fixed indexed annuities which it expects to be required under Rule 151A to register with the Commission.

Dated: January 16, 2009

Respectfully submitted,



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Eugene Scalia  
*Counsel of Record*

Barry Goldsmith

Daniel J. Davis

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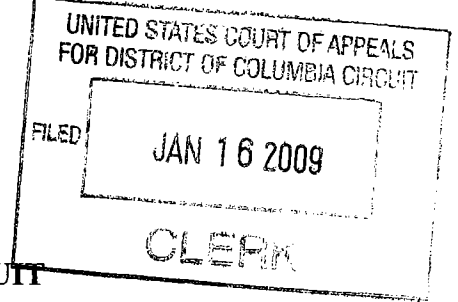
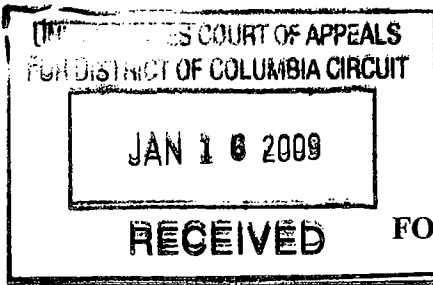
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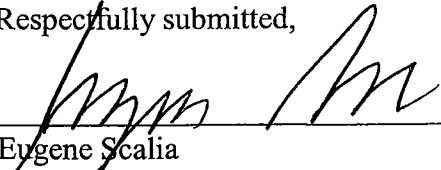
**CORPORATE DISCLOSURE STATEMENT OF  
OM FINANCIAL LIFE INSURANCE COMPANY**

Pursuant to Circuit Rules 15(c)(3) and 26.1, Petitioner OM Financial Life Insurance Company ("OM Financial") states as follows:

1. OM Financial is an insurance corporation incorporated in Maryland.
2. All parent corporations and publicly held companies that own 10 percent or more of petitioner OM Financial are as follows: OM Financial is a wholly-owned subsidiary of Old Mutual PLC.
3. OM Financial is an insurance company that issues fixed indexed annuities which it expects to be required under Rule 151A to register with the Commission.

Dated: January 16, 2009

Respectfully submitted,

  
\_\_\_\_\_  
Eugene Scalia  
*Counsel of Record*

Barry Goldsmith

Daniel J. Davis

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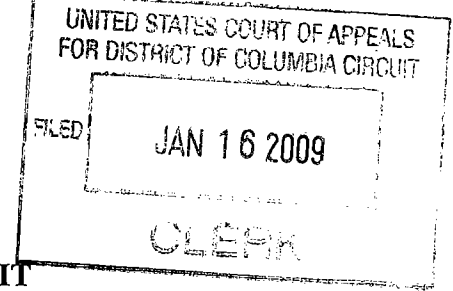
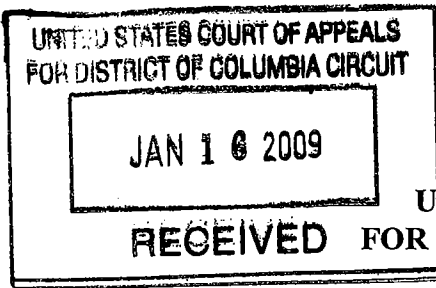
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Case No. 09-1021

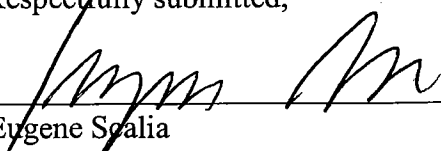
**CORPORATE DISCLOSURE STATEMENT OF**  
**BHC MARKETING**

Pursuant to Circuit Rules 15(c)(3) and 26.1, Petitioner BHC Marketing states as follows:

1. BHC Marketing is an independent marketing organization incorporated in Texas.
2. BHC Marketing has no parent corporations and no publicly held companies that own 10 percent or more of petitioner BHC Marketing's stock.
3. BHC Marketing is an independent marketing organization that markets fixed indexed annuities and that expects its business model to be harmed by Rule 151A.

Dated: January 16, 2009

Respectfully submitted,



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Eugene Scalia  
*Counsel of Record*

Barry Goldsmith

Daniel J. Davis

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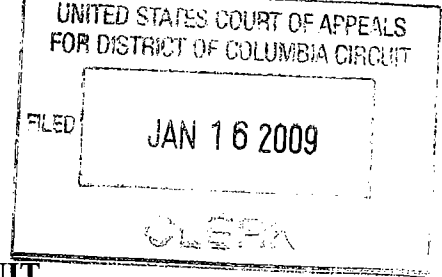
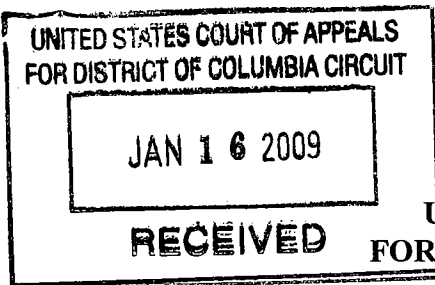
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Respondent.

Case No. 09-1021

**CORPORATE DISCLOSURE STATEMENT OF  
TUCKER ADVISORY GROUP, INC.**

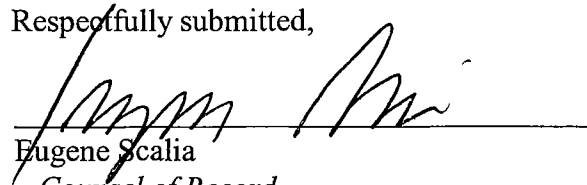
Pursuant to Circuit Rules 15(c)(3) and 26.1, Petitioner Tucker Advisory Group, Inc.

("Tucker") states as follows:

1. Tucker is an independent marketing organization incorporated in Colorado.
2. Tucker has no parent corporations and no publicly held companies that own 10 percent or more of petitioner Tucker's stock.
3. Tucker is an independent marketing organization that markets fixed indexed annuities and that expects its business model to be harmed by Rule 151A.

Dated: January 16, 2009

Respectfully submitted,



---

Eugene Scalia  
*Counsel of Record*

Barry Goldsmith

Daniel J. Davis

GIBSON, DUNN & CRUTCHER LLP

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Washington, D.C. 20036

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*Counsel for Petitioners*

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Respondent.

**PETITIONER'S PROVISIONAL CERTIFICATE  
AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Circuit Rules 15(c)(3) and 28(a)(1), Petitioners state as follows:

**(A) Parties and Amici:**

The parties in this case are American Equity Investment Life Insurance Company, BHC Marketing, Midland National Life Insurance Company, National Western Life Insurance Company, OM Financial Life Insurance Company, Tucker Advisory Group, Inc. (Petitioners) and the United States Securities and Exchange Commission (Respondent). There currently are no intervenors or amici.

Petitioners American Equity Investment Life Insurance Company, Midland National Life Insurance Company, National Western Life Insurance Company, and OM Financial Life Insurance Company are companies that issue fixed indexed annuities which they expect to be

required to register with the Commission. Petitioners BHC Marketing and Tucker Advisory Group, Inc. are independent marketing organizations that market fixed indexed annuities and whose business models will be significantly affected by Rule 151A. The Commission's registration requirements will impose significant costs upon the companies in addition to the costs related to state regulations with which petitioners currently comply.

All parent corporations and publicly held companies that own 10 percent or more of petitioner American Equity are as follows: American Equity is a wholly-owned subsidiary of American Equity Investment Life Holding Company.

All parent corporations and publicly held companies that own 10 percent or more of petitioner Midland National are as follows: Midland National is a wholly-owned subsidiary of Sammons Financial Group, Inc., which is a wholly-owned subsidiary of Consolidated Investment Services, Inc., which is a wholly-owned subsidiary of Sammons Enterprises, Inc.

All parent corporations and publicly held companies that own 10 percent or more of petitioner National Western are as follows: National Western has no parent companies and no publicly-held corporations that hold 10% or more of National Western stock.

All parent corporations and publicly held companies that own 10 percent or more of petitioner OM Financial are as follows: OM Financial is a wholly-owned subsidiary of Old Mutual PLC.

BHC Marketing has no parent corporations and no publicly held companies that own 10 percent or more of petitioner BHC Marketing's stock

Tucker Advisory Group, Inc. has no parent corporations and no publicly held companies that own 10 percent or more of petitioner Tucker Advisory Group, Inc.'s stock.

**(B) Rulings Under Review:**



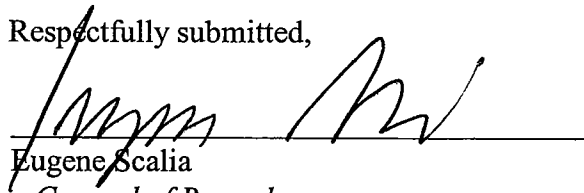
Under review in this case is the rule establishing new standards for determining when fixed indexed annuities are considered not to be annuity contracts under the securities laws adopted by the Commission at an Open Meeting on December 17, 2008. The final rule at issue here was published in the Federal Register on January 16, 2009. Indexed Annuities and Certain Other Insurance Contracts; Final Rule, 74 Fed. Reg. 3,138.

(C) **Related Cases:**

Petitioners are aware of no cases related to this Petition.

Dated: January 16, 2009

Respectfully submitted,



A handwritten signature in black ink, appearing to read 'Eugene Scalia', is written over a horizontal line.

Eugene Scalia  
*Counsel of Record*

Barry Goldsmith

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1050 Connecticut Ave., N.W.

Washington, D.C. 20036

Telephone: (202) 955-8500

Facsimile: (202) 467-0539

*Counsel for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served a true and correct copy of the Docketing Statement, Petition for Review, Corporate Disclosure Statements, and Petitioners' Provisional Certificate as to Parties, Rulings, and Related Cases via hand delivery this 16th day of January, 2009, upon the following:

United States Attorney for the District of Columbia  
555 4th Street, NW  
Washington, DC 20530

Brian Cartwright, General Counsel  
Jacob H. Stillman, Solicitor  
Joseph I. Levinson, Special Counsel  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, DC 20549

  
Daniel J. Davis

JAN 16 2009

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United States Court of Appeals

District of Columbia Circuit

JAN 16 2009

CLERK

DOCKETING STATEMENT

Administrative Agency Review Proceedings

(To be completed by appellant/petitioner)

09-1021

1. CASE NO. \_\_\_\_\_ 2. DATE DOCKETED \_\_\_\_\_

3. CASE NAME American Equity Investment United States Securities  
(lead parties only) Life Insurance Company v. and Exchange Commission

4. TYPE OF CASE:  Review  Appeal  Enforcement  Complaint  Tax Court

5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES \_\_\_\_\_ NO

If YES, cite statute: \_\_\_\_\_

6. CASE INFORMATION:

a. Identify agency whose order is to be reviewed: United States Securities and Exchange Commission

b. Give agency docket or order number(s): Release Nos. 33-8996, 34-59221; File No. S7-14-08;  
74 Fed. Reg. 3,138 (Jan. 16, 2009)

c. Give date(s) of order(s): Jan. 16, 2009

d. Has a request for rehearing or reconsideration been filed at the agency? YES \_\_\_\_\_ NO

If so, when was it filed? \_\_\_\_\_ By whom? \_\_\_\_\_

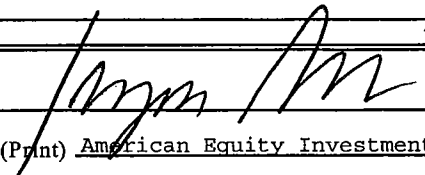
Has the agency acted? YES \_\_\_\_\_ NO \_\_\_\_\_ If so, when? \_\_\_\_\_

e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):  
Petitioner companies issue fixed indexed annuities ("FIAs"). The SEC rule will require them to  
register, offer, and sell FIAs in accordance with the requirements of the Securities Act of 1933.

f. Are any other cases involving the same underlying agency order pending in this Court or in any other Court?  
YES \_\_\_\_\_ NO  If YES, identify case name(s), docket number(s), and court(s): \_\_\_\_\_

g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme  
Court which involve *substantially the same issues* as the instant case presents? YES \_\_\_\_\_ NO   
If YES, give case name(s) and number(s) of these cases and identify court/agency: \_\_\_\_\_

h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for  
dispute resolution? YES \_\_\_\_\_ NO  If so, provide the name of the program and the dates of  
participation. \_\_\_\_\_

Signature  Date January 16, 2009

Name of Party (Print) American Equity Investment Life Insurance Company

Name of Counsel for Appellant/Petitioner (Print) Eugene Scalia Firm Gibson, Dunn & Crutcher LLP

Address 1050 Connecticut Ave, N.W., Washington, D.C. 20036

E-Mail escalia@gibsondunn.com

Phone (202) 955-8500 Fax No. (202) 467-0539

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise  
the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged  
statement. An original and three copies of such letter should be submitted.