

CEFLI VIRTUAL SUMMIT MEETING:

Revisions to the NAIC Suitability in Annuity Transactions Model Regulation

VIRTUAL SUMMIT MEETING

Resource Materials



April 2020

Suitability in Annuity Transactions Model Regulation NAIC Model vs. SEC Regulation Best Interest

SEC Regulation Best Interest (§ 240.15l-1), Form CRS, and amendments to existing forms and rules under the Investment Advisers Act of 1940 (“Advisers Act”) and the Securities and Exchange Act of 1934 (“Exchange Act”) were adopted by the SEC on June 5, 2019. Firms must comply with the new requirements by June 30, 2020.

The NAIC adopted a revised Suitability in Annuity Transactions Model Regulation on February 13, 2020. Insurers must comply with the new requirements of the revised Model by the compliance date associated with each state’s adoption of the revised Model Regulation.

The charts on pages two (2) through four (4) of this document compare the similarities between the two regulations. A more detailed summary of the revised Suitability in Annuity Transactions Model Regulation exists as a separate CEFLI resource document.

Other SEC, FINRA, NAIC Model, and state (insurance or securities) regulations may necessitate additional disclosures and obligations of producers, Registered Representatives (RR), Registered Investment Advisors (RIA), insurers, and institutions selling or distributing annuity products. Such requirements are not summarized here, with the exception of the content included in the chart on pages three (3) and four (4) which compares the list of NAIC “Consumer Profile Information” with the “Customer Investment Profile” data required by the SEC (§ 240.15l-1(b)(2)) and FINRA (Rule 2111).

The chart on pages four (4) and five (5), provides quick links to SEC Regulation Best Interest, Form CRS, FINRA, NAIC and state insurance department best interest-related materials.

This document is intended to provide a high-level overview and does not constitute legal advice.

Disclosure, Care, Conflict of Interest, and Compliance Obligations

Scope	NAIC		SEC	
Applies to recommendations (even in the absence of a sale)	X		X	
Applies to sales	X		X	
Applies to recommendations directly to consumers/retail customers	X		X	
Applies to recommendations directly to institutions, employers, etc.				
Applies to fixed (including indexed) annuities	X			
Applies to variable annuities	X		X	
Applies to non-annuity securities recommendations			X	
Applies to new purchases (including exchanges and replacements)	X		X	
Applies to recommendations impacting existing products			X	
Applies to recommendations regarding investment strategies (even if a specific product is not recommended or sold)			X	
Disclosure Requirements	NAIC		SEC	
	Written	Written or Verbal	Written	Written or Verbal
Material facts regarding the terms of the producer's or the registered representative's (RR) relationship with the consumer/ retail customer:				
<ul style="list-style-type: none"> The fact the broker, dealer or natural person is acting as a broker, dealer, or an associated person 			X ^{^^}	
<ul style="list-style-type: none"> Material fees and costs associated with the recommendation 		X	X ^{^^}	
<ul style="list-style-type: none"> The type and scope of services to be provided to the consumer/retail customer, including any <u>material</u> limitations in the recommendations that can be provided 	X [^]		X ^{^^}	
<ul style="list-style-type: none"> Product features, non-guaranteed elements, limits on returns, risk, etc. 		X	X <i>Implied</i>	
<ul style="list-style-type: none"> Any material conflicts of interest 		X	X	
<ul style="list-style-type: none"> The basis of the recommendation 	X			
<ul style="list-style-type: none"> The types of products (and scope of service, per the SEC regulation) the producer or RR is authorized to sell 	X [^]		X	
<ul style="list-style-type: none"> Information regarding whether the producer or RR is authorized, contracted with, or otherwise able to sell for, limited or multiple insurers (terms of the relationship) 	X [^]			
<ul style="list-style-type: none"> The sources and types of cash and non-cash compensation to be received and the source 	X [^]			
<ul style="list-style-type: none"> The consumer's right to request additional information regarding cash compensation 	X [^]			
<ul style="list-style-type: none"> If requested by the consumer, disclose additional compensation information (i.e. an estimate, the frequency, etc.) 		X		
<ul style="list-style-type: none"> Disclose certain information, under client signature, if the consumer refuses to provide sufficient financial information 	X ^{^^^}			
<ul style="list-style-type: none"> Disclose certain information, under client signature, if the consumer requests a purchase that was not recommended 	X ^{^^^^}			
Care Obligation	NAIC		SEC	
<ul style="list-style-type: none"> Exercise reasonable diligence, care and skill and have a reasonable basis to believe the transaction (or transaction series) is in the consumer's best interest when considering the Consumer Profile Information/ Investment Profile Information, the 	X		X	

risks, the rewards, the costs, etc., without placing the producer's, RR's or other parties' interests ahead of the consumer's interests		
Conflict of Interest	NAIC	SEC
The insurer, broker, or dealer must establish, maintain, and enforce written policies and procedures reasonably designed to:		
<ul style="list-style-type: none"> Identify and avoid, or reasonably manage, and disclosure material conflicts (i.e. conflicts that may influence the producer's or RR's recommendation) including material conflicts related to an ownership interest 	X	X
<ul style="list-style-type: none"> Identify and mitigate conflicts of interest that could create an incentive for a producer or RR to not act in the consumer's best interest 	X	X
<ul style="list-style-type: none"> Identify and disclose any material limitations on securities or investment strategies, and conflicts with such limitations 	X*	X
<ul style="list-style-type: none"> Prevent any material limitations on securities and investment strategies from causing the recommendations not in the best interest 	X <i>Implied</i>	X
<ul style="list-style-type: none"> Identify and eliminate sales contests and quotas, bonuses, and non-cash compensation for the sale of specific products in a period 	X	X
Compliance Procedures Obligation	NAIC	SEC
Establish, maintain and enforce procedures reasonably designed to support compliance with the regulation	X	X

- * "Appendix A" disclosure on product and affiliation limitations.
- ^ Use NAIC Model "Appendix A" or a substantially similar form.
- ^^ Use Form CRS; requires prior approval via a filing.
- ^^^ Use NAIC model "Appendix B" or a substantially similar form.
- ^^^^ Use NAIC model "Appendix C" or a substantially similar form.

NAIC "Consumer Profile Information" vs. SEC Regulation Best Interest (§ 240.15l-1(b)(2)) and FINRA (Rule 2111(a)) "Customer Investment Profile" Data

The chart below summarizes the "Consumer Profile Information" and the "Customer Investment Profile" data a producer or Registered Representative must collect and consider prior to making an annuity recommendation.

Note: SEC and FINRA references to "financial situation and needs" may imply the collection of certain elements itemized under the NAIC Model Regulation (i.e. annual income, debts and other obligations, financial experience, and financial objectives).

"Consumer Profile Information" (NAIC Model) & "Customer Investment Profile" Data (SEC and FINRA)	NAIC	FINRA
<ul style="list-style-type: none"> Age 	X	X
<ul style="list-style-type: none"> Annual income 	X	
<ul style="list-style-type: none"> Financial situation and needs 	X	X
<ul style="list-style-type: none"> Debts and other obligations 	X	
<ul style="list-style-type: none"> Financial experience 	X	
<ul style="list-style-type: none"> Investment experience 		X
<ul style="list-style-type: none"> Insurance needs 	X	
<ul style="list-style-type: none"> Financial objectives 	X	

• Investment objectives		X
• Intended use of the annuity	X	
• Financial time horizon	X	
• Investment time horizon		X
• Existing investments	X	X
• Existing assets or financial products, annuity & insurance holdings	X	
• Liquidity needs	X	X
• Liquid net worth	X	
• Risk tolerance	X	X
• Willingness to accept nonguaranteed annuity elements	X	
• Financial resources used to fund the annuity (FINRA Rule 2111 Suppl. Material .06)	X	X
• Tax status	X	X
• Other information disclosed by the consumer		X

Links to Regulatory Content

The following table contains links to key content related to suitability, best interest, and related standards. Resource materials in grey reflect rules or regulations and related release information. Resource materials in blue reflect checklists, compilations or summaries.

Industry Resource Materials	Source of Linked Materials				
	NAIC	States	FINRA	SEC	Other
SEC Regulation Best Interest Resources					
• Regulation BI (17 CFR 240.151-1) (Electronic Code, only)				X	
• SEC Release for Regulation Interest: The Broker-Dealer Standard of Conduct (Federal Register)				X	
• Commission Interpretation Regarding Standard of Conduct for Investment Advisers (Federal Register)				X	
• Commissioner Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Advisor (Federal Register)				X	
• SEC Regulation Best Interest (Reg BI) Overview and SEC Resources			X		
• SEC Regulation Best Interest: A Small Entity Compliance Guide				X	
• FINRA Reg BI and Form CRS Checklist			X		
• SEC Risk Alert: Examinations (Reg BI) April 7, 2020				X	
• FINRA Regulatory Notice 19-26 on Regulation Best Interest introductory materials and the Regulatory Notice 19-26			X		
SEC Records Resources					
• Records to Be Made by Certain Exchange Member, Brokers and Dealers (17 CFR 240.17a-3) (Electronic Code, only)				X	
• Records to Be Preserved by Certain Exchange Members, Brokers and Dealers (17 CFR 240.17a-4) (Electronic Code, only)				X	
SEC Form CRS Resources					
• Form CRS, for Preparation, Filing and Delivery of Form CRS (17 CFR 240.17a-14) (Electronic Code, only)				X	

• SEC Release for Form CRS Relationship Summary; Amendments to Form ADV (Federal Register)				X	
• Form CRS, Relationship Summary for Brokers and Dealers Providing Services to Retail Investors, Pursuant to 17 CFR 240.17a-14 (17 CFR 249.641) (Electronic Code, only)				X	
• Form CRS Instructions (Appendix B)				X	
• SEC Regulation Best Interest, Form CRS and Related Interpretations				X	
• SEC FAQs on Form CRS				X	
• SEC Risk Alert: Examinations (Form CRS) April 7, 2020				X	
• Reg BI and Form CRS Checklist			X		
• Form CRS Relationship Summary; Amendments to Form ADV: A Small Entity Compliance Guide				X	
SEC Records Resources					
• Records to Be Made by Certain Exchange Member, Brokers and Dealers (17 CFR 240.17a-3) (Electronic Code, only)				X	
• Records to Be Preserved by Certain Exchange Members, Brokers and Dealers (17 CFR 240.17a-4) (Electronic Code, only)				X	
FINRA Resources (non-Reg BI Specific)					
• FINRA Rule 2111			X		
• FINRA Proposal to Change Rule 2111			X		
• New Account Application Template			X		
• FINRA Written Supervisory Procedures Checklist			X		
State Insurance Standards for Suitability and Best Interest					
• NAIC 2020 Annuity Suitability Model with Best Interest Standards	X				
• NY Regulation 187 Annuity Best Interest Standards		X			
• NY DFS FAQs on the First Amendment to Regulation 187		X			
• NY DFS Procedural Guidance for Insurer Filing Disclosures Pursuant to Sections 224.4(m) and 224.6(h)		X			
• NY DFS Supplemental Guidance on Section 224.6(h)		X			
• NY DFS FAQs Regarding Section 224.4(f)		X			

This document is designed to provide a comparison of key elements associated with the 2020 version of the NAIC Suitability in Annuity Transactions Model Regulation and the elements SEC Regulation Best Interest for the benefit of CEFLI's members and does not constitute legal advice.