

## **Agenda**

**2018 CEFLI Advisory Committee Meeting  
Wednesday, November 28, 2018  
10:00 AM - 3:00 PM, EST  
Charles Board Room  
The Residence Inn  
7335 Wisconsin Ave.  
Bethesda, MD**

**Dial-in: 1 (877) 699-4804  
Passcode: 240 744 3027 #**

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| <b>I. Welcome and Introduction.</b>                     | <b>Donald J. Walters</b> |
| <b>II. Antitrust Statement.</b>                         | <b>Donald J. Walters</b> |
| <b>III. Approval of Minutes – June 6, 2018 Meeting.</b> | <b>The Committee</b>     |
| <b>IV. SEC Rule Proposals.</b>                          | <b>The Committee</b>     |

Earlier this year, the SEC issued a package of proposed rules to address retail investor relationships with investment advisers and broker-dealers.

The proposed rules were issued in three forms:

- Regulation Best Interest;
- Investment Adviser Interpretations; and
- Form CRS - Relationship Summary.

Regulation Best Interest has been long-awaited by the financial services industry. Reportedly, the SEC has received a high volume of comments concerning Regulation Best Interest.

Moreover, during SEC Chair Clayton's recent roundtable discussions across the country with retail investors, it is apparent that many retail investors do not fully understand the distinctions between broker-dealers and investment advisers. Therefore, Form CRS has been the focus of attention by consumer groups and other interested parties to clarify the unique and different roles played by broker-dealers versus investment advisers.

In addition, as the NAIC pursues its work to modify the NAIC Suitability in Annuity Transactions Model Regulation (see, *infra*), several elements of revisions to the Model Regulation are awaiting the outcome of the SEC's final rule pertaining to Regulation Best Interest in order to complete final modifications to the Model Regulation.

(Given the volume of the proposed rule package, links are provided below to the pertinent proposed rules under discussion.)

Regulation Best Interest:

<https://www.federalregister.gov/documents/2018/05/09/2018-08582/regulation-best-interest>

Form CRS – Relationship Summary:

<https://www.federalregister.gov/documents/2018/05/09/2018-08583/form-crs-relationship-summary-amendments-to-form-adv-required-disclosures-in-retail-communications>

***The Committee will be asked to discuss recent developments pertaining to comments received and issuance of final rules pertaining to Regulation Best Interest as well as Form CRS and their potential impact on state insurance regulation and life insurance compliance strategies.***

**V. Possible Revisions to the NAIC Suitability in Annuity Transactions Model Regulation. The Committee**

The NAIC Annuity Suitability (A) Working Group met recently in San Francisco to explore further revisions to the NAIC Suitability in Annuity Transactions Model Regulation. The Working Group's meeting in San Francisco was preceded by a two-day Drafting Session in Chicago in late October to consider further revisions to the Model Regulation.

(See copy attached of the proposed revisions to the NAIC Suitability in Annuity Transactions Model Regulation.)

Though it was the goal of the Working Group to develop a final draft for possible approval by the NAIC prior to the end of calendar year 2018, it is clear that the work of the Working Group will continue into 2019.

Several possible "sticking points" regarding movement toward a final draft of proposed revisions to the Model Regulation remain. Foremost among these concerns is a question concerning whether the Model Regulation should be

revised to include a “best interest” standard that would be applicable to life insurance as well as annuity products.

The current version of the Model Regulation also includes a “safe harbor” for life insurance companies that conduct annuity transactions which are subject to FINRA rules pertaining to suitability and supervision to forgo compliance with the Model Regulation. A key question remains concerning whether issuance of the SEC’s final rule on Regulation Best Interest may potentially modify existing FINRA suitability standards and, in turn, the “safe harbor” provision of the Model Regulation.

***The Committee will be asked to discuss developments pertaining to the activities of the NAIC’s Annuity Suitability (A) Working Group and possible revisions to the NAIC Suitability in Annuity Transactions Model Regulation and the impact these developments may have on the SEC’s final rule on Regulation Best Interest (and potentially FINRA’s suitability and supervision standards) as well as the “safe harbor” provision of the current version of the Model Regulation.***

**VI. New York Department of Financial Services – The Committee  
Final Amendments to Regulation 187.**

On July 17, the New York Department of Financial Services issued final amendments to New York’s Regulation 187. (See copy attached.)

The final amendments to Regulation 187 become effective on a staggered schedule for annuity products (August 1, 2019) and life insurance products (February 1, 2020).

With issuance of the final amendments to Regulation 187, New York becomes the first state in the country to subject both annuity and life insurance products to a “best interest” standard.

Though representatives of the New York Department of Financial Services (NYDFS) serve on the NAIC’s Annuity Suitability (A) Working Group, it is interesting to note that the NYDFS did not await the outcome of the NAIC’s Annuity Suitability (A) Working Group effort to consider possible modifications to the NAIC Suitability in Annuity Transactions Model Regulation nor did it await the outcome of the SEC’s final rules pertaining to Regulation Best Interest before issuing its final amendments to Regulation 187.

***The Committee will be asked to discuss the final amendments to New York’s Regulation 187 and its impact upon compliance strategies within the life insurance industry.***

**VII. SEC Proposed Rules for Disclosure Improvements for Variable Annuity and Variable Life Insurance Products. The Committee**

The SEC recently issued proposed rules to improve the disclosure for variable annuities and variable life insurance products.

The proposed rules would permit the use of two distinct types of contract summary prospectuses: (1) An initial summary prospectus covering variable products currently offered to new investors; and (2) updating summary prospectuses for existing investors.

In addition, the proposed rules would require the variable product's statutory prospectus to be publicly available, free of charge, through a website address.

The comment period on the proposal expires February 15, 2019.

(Given that the proposed rules comprise 480 pages, they can be found through the following link:)

<https://www.sec.gov/rules/proposed/2018/33-10569.pdf>

***The Committee will be asked to discuss the SEC's proposed rules pertaining to Disclosure Improvements for Variable Annuity and Variable Life Insurance Products.***

**VIII. State Proposed Fiduciary Rules. The Committee**

Since the issuance of the DOL's Fiduciary Rule (which was vacated by the Fifth Circuit earlier this year), several state legislatures and securities regulators are considering possible fiduciary rules to be applicable to various financial services professionals including broker-dealers and investment advisers.

Recently, the state of New Jersey issued a pre-proposal to seek comments on a possible fiduciary rule. (See copy attached.)

The introduction of fiduciary rules at the state level may establish a complex, patchwork of differing state laws and regulations attempting to impose fiduciary standards in a disparate manner across several states. These developments would add further complexity to complying with differing state fiduciary requirements.

***The Committee will be asked to discuss the potential impact of state proposed fiduciary rules on current compliance strategies for life insurance companies.***

**IX. FINRA's Securities Industry Essentials Examination. The Committee**

Effective October 1, FINRA introduced the Securities Industry Essentials Examination for prospective securities industry professionals.

The SIE exam would evaluate a candidate's general securities industry knowledge but would not allow an individual to be qualified for registration with a FINRA member broker-dealer. In order to become registered to engage in the securities business, an individual must pass the SIE exam as well as a qualification exam for the type of business to be conducted.

It may be important to note that insurance producers who may seek to attain a Series 6 registration with FINRA must now pass the SIE exam before becoming qualified to take the Series 6 examination. The individual must be an associated person with a member firm in order to take the Series 6 examination.

***The Committee will be asked to discuss the initial impact of the Securities Industry Essentials examination program on existing registration and licensing practices.***

**X. Use of Various Data Sources in Accelerated Underwriting of Life Insurance Products. The Committee**

Life insurance companies continue to explore ways in which they can allow customers to more easily purchase life insurance products.

As a result, several companies have introduced what has been referred to as "accelerated underwriting" to allow consumers to purchase life insurance products in a more expedited manner.

However, over the past several months, "accelerated underwriting" practices have become the focus of regulatory concern pertaining to the various data sources that may be utilized by a life insurance company in order to expedite the life insurance product underwriting process.

Regulators maintain concerns regarding potential discriminatory practices that may exist in the use of a wide range of data sources to arrive at a determination as to an applicant's underwriting status for life insurance.

***The Committee will be asked to discuss current industry practices pertaining to the use of various data sources in "accelerated underwriting" of life insurance products and the extent to which regulators have expressed concern regarding the use of these data sources.***

**XI. Role of “Robo Advisors” in Securities and Insurance. The Committee**

As the range of various securities and insurance products has grown over the past several years, many individuals (often with smaller accounts) have begun to rely upon “robo advisors” to obtain information to allow consumers to make informed choices regarding investment and retirement strategies.

The increased role of “robo advisors” has raised regulatory concerns regarding the extent to which these “robo advisors” are supervised at the federal and state securities level and state insurance level and whether the current securities and insurance regulatory schemes are well-suited to provide appropriate oversight of “robo advisor” practices.

***The Committee will be asked to discuss their observations concerning the role of “robo advisors” in the marketplace for securities and insurance products and whether current securities and insurance laws and regulations are adequate to provide appropriate oversight of “robo advisor” practices.***

**XII. FINRA/NAIC Data Sharing. The Committee**

FINRA and the NAIC agreed to share FINRA disciplinary history with the NAIC for possible further action by state insurance regulatory authorities.

While the NAIC has indicated that they share producer disciplinary histories provided by FINRA with various state insurance departments, it is up to each state insurance department to determine whether any action may be taking with respect to individuals identified in the disciplinary history reports.

***The Committee will be asked to discuss the current status of information sharing concerning producer disciplinary histories provided by FINRA to the NAIC for possible action by state insurance departments.***

**XIII. NAIC Lost Policy Locator Service. The Committee**

The NAIC maintains its Lost Policy Locator Service as a means to consolidate information provided previously by individual state-specific websites designed to assist life insurance companies to identify potential beneficiaries of life insurance policy proceeds.

The NAIC has been working diligently over the past several months to refine the types of data provided to the Lost Policy Locator Service in response to suggestions and recommendations offered by life insurance companies.

However, a handful of states have chosen not to participate in the NAIC Lost Policy Locator Service thereby requiring life insurance companies to visit these state-specific sites in order to obtain the information necessary to identify potential beneficiaries of life insurance policy proceeds.

***The Committee will be asked to discuss recent updates to the NAIC Lost Policy Locator Service and will examine NAIC efforts to simplify the data reporting process.***

#### **XIV. NAIC Election Results.**

#### **The Committee**

At its Fall National Meeting in San Francisco, the NAIC elected new officers for 2019.

The 2019 NAIC officers are:

- President - Eric Cioppa - Main Superintendent of Insurance
- President-Elect - Ray Farmer - South Carolina Insurance Director
- Vice President - Gordon Ito - Hawaii Insurance Commissioner
- Secretary-Treasurer - Dean Cameron - Idaho Insurance Director

Each officer will assume his duty effective January 1, 2019.

The NAIC annually conducts a Roundtable Retreat in January of each year to determine who will serve as leaders of various NAIC Committees.

***The Committee will be asked to discuss the recent election of NAIC Officers for 2019.***

#### **XV. Fraud Awareness.**

#### **The Committee**

Those who may choose to perpetrate frauds have no limit to their creativity. Firms and life insurance companies must be ever vigilant to identify and detect such frauds in order to protect corporate and consumer interests.

***The Committee will be asked to discuss any new types of fraud that have arisen over the past several months that should be of concern to life insurers.***

**XVI. Contemporary Compliance and Ethics Challenges. The Committee**

***The Committee will be asked to comment upon their observation of contemporary compliance and ethics challenges in the marketplace for life insurance and annuity products that may warrant further review by CEFLI's Compliance and Ethics Committee.***

**XVII. Other Business.**