

## Agenda

**2018 CEFLI Advisory Committee Meeting  
Tuesday, February 5, 2019  
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.</b>   | <b>Welcome and Introduction.</b>                                     | <b>Donald J. Walters</b> |
| <b>II.</b>  | <b>Antitrust Statement.</b>  | <b>Donald J. Walters</b> |
| <b>III.</b> | <b>Approval of Minutes – November 28, 2018 Meeting.</b>              | <b>The Committee</b>     |
| <b>IV.</b>  | <b>FINRA 2019 Risk Monitoring and Examination Priorities Letter.</b> |                          |

FINRA recently released its 2019 Risk Monitoring and Examination Priorities Letter which identifies those subject matters that FINRA examination activities will focus on in the upcoming year. (See copy attached.)

The Letter is divided into distinct areas of concern including sales practice risks, operational risks, market risks and financial risks.

Subject areas noted as areas for examination in the Sales Practice Risks section of the Letter include:

- Suitability including Variable Annuities;
- Senior Investors;
- Anti-Money Laundering;
- Outside Business Activities and Private Securities Transactions; and
- Supervision.

***The Committee will be asked to discuss those subject matters identified as potential examination priorities in the 2019 FINRA Risk Monitoring and Examination Priorities Letter.***

**V. SEC 2019 Examination Priorities Report. The Committee**

The SEC's Office of Compliance Inspections and Examinations ("OCIE") recently issued their 2019 examination priorities report. (See copy attached.)

Areas for heightened focus during examinations in 2019 may include:

- Conflicts of Interest
- Senior Investors and Retirement Accounts and Products
- Cybersecurity
- Anti-Money-Laundering Programs

***The Committee will be asked to discuss those subject matters identified as potential examination priorities in the SEC's 2019 OCIE Examination Priorities Report.***

**VI. FINRA 2018 Examination Findings Report. The Committee**

FINRA recently released its 2018 Examination Findings Report. This is the second year in which FINRA has developed such a report as an outgrowth of the FINRA 360 initiative. (See copy attached.)

The Report highlights concerns regarding suitability for retail customers and, specifically, unsuitable variable annuity recommendations. Other areas of concern included inadequate supervisory systems and lack of documentation of investigations of potentially suspicious activities.

**VII. SEC Regulation Best Interest. The Committee**

The SEC issued proposed rule Regulation Best Interest ("Regulation BI") in 2018. The proposed rule was long-awaited by the financial services industry in order to clarify the sales standards that will be applicable to broker-dealers and investment advisers making recommendations to retail investors.

Regulation BI reportedly has received one the highest volume of comments of any rule proposal issued by the SEC in recent years. Accordingly, it will take considerable time for the SEC staff to review the content of the comments and consider those comments for possible modifications to the rule proposal.

Recently, the US government underwent the longest shutdown in American history. During the shutdown, many members of the SEC staff were furloughed and not permitted to work. Therefore, it can be surmised that further progress toward development of a final rule following staff analysis of the volume of comments received on proposed rule Regulation BI may be delayed.

***The Committee will be asked to discuss perspectives related to proposed rule Regulation Best Interest and also will be asked to discuss the impact the recent US government shutdown may have on the timeline associated with development of a final rule.***

**VIII. 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.***

**IX. Lack of a “Safe Harbor” - New York Regulation 187. The Committee**

One of the key provisions of the NAIC Suitability in Annuity Transactions Model Regulation (the “Model Regulation”) is a “safe harbor” provision that reads (in pertinent part):

*“Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation.”*

This provision allows life insurance companies to rely upon a broker-dealer’s application of FINRA’s suitability and supervision standards for annuity transactions to meet the life insurer’s compliance requirements under the Model Regulation.

Under New York Regulation 187, Section 224.4 (g) reads (in pertinent part):

*“An insurer may contract with a third-party to establish and maintain a system of supervision with respect to insurance producers.”*

However, New York Regulation 187 does not contain a “safe harbor” provision similar to the “safe harbor” provision found within the NAIC’s Model Regulation to allow life insurers who abide by the Model Regulation’s “safe harbor” to meet the life insurer’s compliance requirements under the Model Regulation.

Under Regulation 187, life insurers may elect to contract with a broker-dealer to apply FINRA’s supervisory standards as a means to demonstrate that the life insurer meets the supervisory obligations under Regulation 187.

However, registered representatives of FINRA broker-dealers are currently required to abide by FINRA’s suitability standard whereas Regulation 187 will require a producer (i.e., an insurance agent or broker (such as a registered representative within a broker-dealer who is also licensed to sell insurance products)) to abide by New York’s “best interest” standard.

This raises several questions:

- *Will FINRA broker-dealers be willing to enter into a contractual obligation with a life insurer to perform supervisory responsibilities for annuity transactions subject to Regulation 187?*
- *Will compliance with FINRA supervisory rules be deemed by the New York Department of Financial Services to be adequate to demonstrate Regulation 187’s requirement “... to establish and maintain a system of supervision with respect to insurance producers?”*

- *Will FINRA consider undertaking education and training activities to inform broker-dealers and their registered representatives of the requirements of Regulation 187 including its “best interest” standard?*

***The Committee will be asked to discuss the implications of the lack of a “safe harbor” for annuity transactions conducted through a FINRA broker-dealer under New York’s Regulation 187.***

**X. SEC Risk Alert - Advisor Texting and Social Media Use. The Committee**

The SEC’s Office of Compliance Inspections and Examinations recently issued a Risk Alert to outline observations from recent investment adviser examinations conducted by the SEC with a focus on electronic messaging. (See copy attached.) For purposes of this exam activity, “electronic messaging” included text/SMS messaging, instant messaging, personal email and personal or private messaging.

The Risk Alert offers examples of practices concerning the use of electronic messaging that the SEC believes may help advisers in meeting compliance obligations. The Risk Alert offers recommendations concerning policies and procedures, employee training and attestations, supervisory review and control over devices.

While the Risk Alert pertains solely to registered investment advisers, it may be helpful to inform those companies that may be considering strategies to permit use of texting/SMS messaging and other communication methods for their insurance producers.

***The Committee will be asked to discuss the SEC Risk Alert pertaining to the use of “electronic messaging” including text and SMS messages as well as social media use.***

**XI. Continuing Education Requirements for Investment Adviser Representatives. The Committee**

Though North American Securities Administrators Association (“NASAA”) is developing a Model Law or Regulation which will mandate that investment advisor representatives (“IAR”) complete annual continuing education requirements.

NASAA indicated that investment advisers, unlike insurance producers and broker-dealer registered representatives, are not subject to mandatory continuing education requirements.

Therefore, NASAA securities regulators are considering developing a Model Law to impose mandatory continuing education requirements on investment advisers.

NASAA conducted a survey of industry personnel and securities regulators soliciting input on how to develop and implement a continuing education program for investment advisers. The results of that survey, as well as a FAQ document on the massive project can be found through the following link:

<http://www.nasaa.org/industry-resources/investment-advisers/nasaa-survey-regarding-continuing-education-for-investment-adviser-representatives>

***The Committee will be asked to discuss the NASAA effort to develop a Model Law or Regulation to require investment advisers to comply with mandatory continuing education requirements.***

**XII. NAIC Insurance Data Security Model Law. The Committee**

In 2017, the NAIC adopted its Insurance Data Security Model Law (the “Model Law”) to establish legal requirements for an insurer’s cybersecurity program. South Carolina, through the support of its Insurance Director, Ray Farmer, who chairs the NAIC’s Cybersecurity Working Group, became the first state in the nation to adopt the Model Law.

The Model Law closely follows the New York Cybersecurity Regulation which became effective on March 1, 2017.

***The Committee will be asked to discuss the current status of legislation introduced in the states to adopt the NAIC’s Insurance Data Security Model Law.***

**XIII. New York Department of Financial Services (“NYDFS”) The Committee Circular Letter No. 1 (2019)**

The NYDFS recently issued Circular Letter No. 1 regarding insurers use of external consumer data and information sources in underwriting for life insurance.

[https://www.dfs.ny.gov/insurance/circltr/2019/cl2019\\_01.htm](https://www.dfs.ny.gov/insurance/circltr/2019/cl2019_01.htm)

In 2017, the NYDFS issued a Section 308 letter seeking information on life insurers’ use of “external consumer data or information sources” in connection with either an “accelerated or algorithmic underwriting programs.”

Circular Letter No. 1 identifies two areas of concern:

- The use of external data sources, algorithms and predictive models has a significant potential negative impact on the availability and affordability of life insurance for protected classes of consumers; and
- The use of external data sources is often accompanied by a lack of transparency for consumers.

***The Committee will be asked to discuss the issues identified within NYDFS Circular Letter No. 1 which also have been identified by the NAIC Big Data Working Group as potential areas of concern for other state insurance regulators.***

#### **XIV. FINRA360 Update.**

#### **The Committee**

In 2017, FINRA launched FINRA360; to conduct a comprehensive review of FINRA rules, policies and procedures with the goal of assuring that “FINRA is the most efficient and effective self-regulatory organization it can be.”

As an outgrowth of the FINRA360 initiative, FINRA has published reports of its Examination Findings, has introduced improvement to its Examination Program and made modifications to its Enforcement Structure.

***The Committee will be asked to discuss recent developments pertaining to the FINRA360 initiative.***

#### **XV. State-Proposed Fiduciary Rules.**

#### **The Committee**

Since the United States Court of Appeals for the Fifth Circuit vacated the DOL’s Fiduciary Rule last year, several state legislatures and securities regulators are considering possible fiduciary laws/rules to be applicable to various financial services professionals including broker-dealers and investment advisers.

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.***

**XVI. FINRA/NAIC Data Sharing.**

**The Committee**

FINRA and the NAIC agreed to share FINRA disciplinary histories 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.***

**XVII. 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 explore life insurers' use of the service.***

**XVIII. NAIC Committee Assignments.**

**The Committee**

The NAIC recently announced its 2019 Committee Chairs and Vice Chairs.

Committee assignments of key interest to CEFLI member companies include:

Life Insurance and Annuities (A) Committee

Chair: Doug Ommen, Commissioner, Iowa Insurance Division

Vice-Chair: Stephen C. Taylor, Commissioner, District of Columbia Department of Insurance, Securities and Banking



Market Regulation and Consumer Affairs (D) Committee

Chair: Chlora Lindley-Myers, Director, Missouri Department of Insurance,  
Financial Institutions and Professional Registration (“DIFP”)

Vice-Chair: Allen W. Kerr, Commissioner, Arkansas Insurance Department

***The Committee will be asked to discuss recent NAIC Committee Assignments and their implications for state insurance regulatory matters in 2019.***

**XIX. Update on NAIC State Ahead Strategic Plan. The Committee**

Recently, the NAIC announced a new “State Ahead” strategic plan which will guide the future direction of the organization.

***The Committee will receive an update report on the NAIC’s State Ahead Strategic Plan.***

**XX. 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.***

**XXI. 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.***

**XXII. Other Business.**