

## Agenda

**2018 CEFLI Advisory Committee Meeting**  
**Tuesday, June 18, 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. Welcome and Introduction.</b>  | <b>Donald J. Walters</b> |
| <b>II. Antitrust Statement.</b>  | <b>Donald J. Walters</b> |
| <b>III. Approval of Minutes – February 5, 2019 Meeting.</b>                | <b>The Committee</b>     |
| <b>IV. SEC Regulation Best Interest and Form CRS Relationship Summary.</b> | <b>The Committee</b>     |

On June 5, the SEC approved Regulation Best Interest. Regulation Best Interest represents one of the most significant changes to the standards by which financial service industry firms, including life insurance companies, will distribute their products over the years ahead.

(A copy of the text of Regulation Best Interest is attached.<sup>1</sup>)

Together with the SEC's approval of Regulation Best Interest, the SEC also approved the Form CRS Relationship Summary which will require registered investment advisers and broker-dealers to disclose the nature of their relationship when offering advice to retail investors. Form CRS will also include a link to the SEC's investor education website.<sup>2</sup>

Regulation Best Interest places several obligations on registered investment advisers and broker-dealers including:

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<sup>1</sup> The full 771 page SEC Release adopting Regulation Best Interest can be found within SEC Release No. 34-86031.  
<https://www.sec.gov/rules/final/2019/34-86031.pdf>

<sup>2</sup> The full 524 page SEC Release adopting the Form CRS Relationship Summary can be found within Release Nos. 34-86032.  
<https://www.sec.gov/rules/final/2019/34-86032.pdf>

- Disclosure Obligation.

Disclosure in writing of all material facts related to the scope of the relationship of the retail customer including:

- That the firm or its registered representative is acting as a broker or dealer with respect to the recommendation;
- Material fees and costs of the transactions, holdings and accounts;
- The type and scope of services provided to the retail customer, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail customers; and
- All material facts relating to conflicts of interest that are associated with the recommendation.

- Care Obligation.

Exercise reasonable diligence, care and skill in making a recommendation to:

- Understand the potential risks, rewards and costs associated with the recommendation and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers;
- Have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards and costs associated with the recommendation and does not place the financial or other interest of the broker-dealer or its registered representatives ahead of the interest of the retail customers; and
- Have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker, dealer or such natural person making the series of recommendations ahead of the interest of the retail customer.

- Compliance Obligation.

Establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest.

***The Committee will be asked to discuss the developments leading to the SEC's approval of Regulation Best Interest, reactions to Regulation Best Interest from fiduciary advocates and others and how this rule will change current securities product distribution practices in the financial services industry.***

**V. Other Possible Implications Arising Out of Regulation Best Interest.**

**A. State Proposed Fiduciary Legislation/Regulations.**

Some commentators who expressed concern regarding the rigor of Regulation Best Interest following its release have indicated that Regulation Best Interest's approval by the SEC could lead to an increase in the introduction of fiduciary legislation and regulation in the states.

***The Committee will be asked to discuss their perspectives on whether the SEC's approval of Regulation Best Interest may lead to an increase in the introduction of fiduciary legislation in the states.***

**B. Possible Rescission/Modifications - FINRA Rule 2111 (Suitability).**

The SEC's approval of Regulation Best Interest may lead to a review of whether FINRA will resend or modify Rule 2111 pertaining to suitability and will establish a new rule to accommodate Regulation Best Interest.

***The Committee will be asked to discuss their perspectives on whether the SEC's approval of Regulation Best Interest may lead to possible rescission or modification of FINRA Rule 2111 (Suitability).***

**C. Modifications to the NAIC Suitability in Annuity Transactions Model Regulation.**

The NAIC Suitability in Annuity Transactions Model Regulation allows life insurance companies to rely upon a "safe harbor" provision to enter into contractual agreements with third-party distribution organizations such as broker-dealers to conduct supervision of annuity suitability provided the transaction is subject to FINRA's suitability standards.

To the extent that FINRA will rescind or modify its current suitability standards, then the NAIC may need to consider modifying the “safe harbor” provision currently embodied within the NAIC Suitability in Annuity Transactions Model Regulation to allow life insurers to rely upon a third-party distributor’s compliance with FINRA standards to meet the supervision of annuity suitability requirements under the NAIC Suitability in Annuity Transactions Model Regulation.

(As an example of possible modifications to the NAIC Suitability in Annuity Transactions Model Regulation, please see the attached comment letter submitted to the Annuity Suitability Working Group by the Iowa Insurance Division.)

***The Committee will be asked to discuss their perspectives on whether the SEC’s approval of Regulation Best Interest may lead to modifications of the “safe harbor” provision under the NAIC Suitability in Annuity Transactions Model Regulation.***

D. Registration of Equity Indexed Annuities - Harkin Amendment - Dodd Frank.

The “Harkin Amendment” to the Dodd Frank Wall Street Reform in Consumer Protection Act (“Dodd Frank”) was developed to exempt equity indexed annuities from SEC registration.

To qualify for this exemption from the registration requirements under Section 3 (a)(8) of the Securities Act of 1933, sales of an equity-indexed annuity contract would have to be “...subject to suitability standards established by the NAIC....”

Proposed revisions to the NAIC Suitability in Annuity Transactions Model Regulation may eliminate the term “suitability” in lieu of a “best interest” standard.

***The Committee will be asked to discuss whether possible modifications to the NAIC Suitability in Annuity Transactions Model Regulation may eliminate the exemption from registration for equity indexed annuity contracts under the “Harkin Amendment” to Dodd Frank.***

**VI. DOL Fiduciary Rule.**

**The Committee**

The US Department of Labor (“DOL”) recently published its regulatory calendar for 2019. Through this publication, the DOL indicated that it plans to issue a revised version of its former DOL Fiduciary Rule prior to the end of 2019.

Media reports suggest there has been coordination between the SEC and the DOL as it relates to the SEC’s development of Regulation Best Interest. These reports signal intent on the part of the DOL to harmonize key elements of Regulation Best Interest in the DOL’s development of a revised Fiduciary Rule.

***The Committee will be asked to discuss the extent to which they may be aware of coordination between the SEC and the DOL with respect to the DOL’s development of a revised Fiduciary Rule.***

**VII. Innovation-Related Regulatory Developments.**

**The Committee**

Over the past several months, FINRA and the SEC have announced the introduction of two new innovation-related initiatives.

**A. FINRA Office of Innovation.**

FINRA recently announced the establishment of a new Office of Innovation that will serve as a central point for coordination of issues related to significant financial innovations. The Office of Innovation seeks to further enhance FINRA’s ability to identify, understand and foster financial innovation “in a manner that strengthens investor protection and market integrity.”

Haimera Workie will serve as the Head of the new Office of Innovation.

**B. SEC Strategic Hub for Innovation and Financial Technology (“FinHub”).**

The SEC recently announced the establishment of a new Strategic Hub or Innovation and Financial Technology (“FinHub”).

The SEC FinHub will:

- Provide a portal for industry and the public to engage directly with SEC staff on innovative ideas and technological developments;
- Publicize information regarding the SEC's activities and initiatives involving FinTech;
- Engage with the public through publications and events, including a FinTech Forum focusing on distributed ledger technology and digital assets planned for 2019;

- Act as a platform and clearinghouse for SEC staff to acquire and disseminate information and FinTech-related knowledge within the agency; and
- Serve as a liaison to other domestic and international regulators regarding emerging technologies in financial, regulatory, and supervisory systems.

The SEC's FinHub will be led by Valerie A. Szczepanik, Senior Advisor for Digital Assets and Innovation and Associate Director in the SEC's Division of Corporation Finance.

***The Committee will be asked to discuss these FINRA and SEC innovation-related initiatives and their potential impact on innovation activities throughout the financial services industry.***

#### **VIII. NAIC Innovation and Technology (EX) Task Force. The Committee**

##### **A. Anti-Rebating Laws.**

The NAIC Innovation and Technology (EX) Task Force was developed to allow state insurance regulators to gain a better understanding of the types of innovation activities that are taking place in the insurance marketplace.

The Task Force recently examined the extent to which anti-rebating laws may serve as a possible impediment to pursuing various innovation strategies. For example, insurers may encourage insureds to accept certain items such as a “wearable device” that may provide the insurer with a broader range of information that may allow an applicant to qualify for more favorable rates or receive other benefits.

Only a few states maintain anti-rebating laws and other states have recently repealed them. Therefore, the Task Force is examining the question of whether anti-rebating laws are necessary.

***The Committee will be asked to discuss the NAIC's Innovation and Technology (TX) Task Force's review of whether state anti-rebating laws may serve as an impediment to possible innovations.***

##### **B. Insurer Use of “Big Data” in Accelerated Underwriting.**

The NAIC's Big Data (EX) Working Group, under the Innovation and Technology (EX) Task Force, is exploring the extent to which insurers are using “big data” sources to provide information that is used in “accelerated underwriting” for life insurance products.

These issues raise several concerns including the extent to which insurers are able to verify the accuracy of the data that is used for “accelerated underwriting” purposes and whether this data may be used to discriminate against potential applicants. Also, consumers have expressed concerns regarding data privacy issues due to the increased use of non-traditional data sources (such as social media) that may be used to attract and evaluate prospective customers.

***The Committee will be asked to discuss the activities of the NAIC’s Big Data (EX) Working Group and their concerns regarding validation of data used in “accelerated underwriting” practices in the life insurance industry.***

**IX. Regulatory Expertise in Data Analysis. The Committee**

State (and federal) regulators increasingly rely upon a broad range of data to conduct market regulation activities. Regulated entities such as life insurers are often asked to provide significant amounts of data that are used for analysis by regulators in their market oversight activities.

However, the ability to analyze a broad range of data for market regulation purposes requires a specific expertise which, given budget constraints that exist within many states, it may be difficult to attract and maintain individuals who possess the appropriate expertise to conduct data analysis for market regulation and oversight purposes.

Given the shortage of this expertise (especially, within state insurance departments) discussions have suggested that, perhaps, the NAIC (and federal regulators) might consider hiring data analysts which could conduct analysis of the data that may become increasingly important for market regulation and oversight purposes.

***The Committee will be asked to discuss the challenges associated with attracting and maintaining individuals who possess the appropriate expertise to conduct data analysis for market regulation and oversight purposes and the extent to which data analytics may become a more important future component of regulatory oversight.***

**X. 401(k) Rollover Transactions by Non-Securities Licensed Personnel.**

With a growing number of individuals nearing retirement, financial professionals are often presented with questions concerning whether to “roll over” an individual’s 401(k) retirement plan into another financial product (or financial products) to meet their retirement needs.

It is not uncommon for 401(k) retirement plans to hold their assets in the form of mutual funds or other securities.

Securities and insurance regulators have recently reminded producers that, to the extent that a producer may be an insurance-only licensee, making a recommendation to “rollover” securities that currently reside within a 401(k) retirement plan in order to purchase a non-securities products may constitute a transaction for which the producer is not appropriately licensed.

Stated differently, an insurance-only producer is not permitted to make recommendations concerning the disposition of assets currently invested in securities that reside within a 401(k) retirement plan in order to recommend the purchase of a non-securities products (e.g., a fixed annuity) for which the insurance-only producer may be appropriately licensed.

***The Committee will be asked to discuss the extent to which 401(k) “rollover” transactions are analyzed by state insurance department and federal securities regulators to determine whether individuals conducting these types of transactions are licensed appropriately and whether these types of 401 (k) “rollover” transactions continue to be a source of regulatory concern.***

**XI. Senior Issues.**

**The Committee**

A. NASAA, FINRA and SEC Issue Senior Safe Act Guidelines.

The North American Securities Administrators Association, FINRA and the SEC recently issued guidelines for organizations to comply with the provisions of the recently enacted Senior Safe Act. (See copy attached.)

For firms and individuals that satisfy the Senior Safe Act’s requirements, the Senior Safe Act provides immunity from liability in any civil or administrative proceeding for reporting potential exploitation of the senior citizen.

***The Committee will be asked to discuss the Senior Safe Act Guidelines recently issued by NASAA, FINRA and the SEC.***

B. NASAA Model Law.

In 2016, NASAA adopted a Model Law to help detect and prevent financial abuse of elder adults. To date, 21 states have adopted laws or regulations based upon the NASAA Model Law.

Among its provisions, the NASAA Model Law enables broker-dealers or investment advisers to impose an initial delay of disbursements from the accounts of an eligible adult for up to 15 days if financial exploitation is suspected.



***The Committee will be asked to discuss developments related to possible enactments of the NASAA Model Law in various states and whether these laws and regulations have had a discernible positive impact in protecting the interest of senior investors.***

C. SEC and FINRA Senior-Related Initiatives.

The SEC and FINRA have recognized that senior investors may be more vulnerable to possible financial exploitation. As a result, both organizations have explored initiatives to address concerns related to the possible financial exploitation of senior investors.

Through public education and outreach, examination activities, development of senior “hotlines,” in developing rules such as FINRA Rules 4512 (Customer Account Information) and 2165 (Financial Exploitation of Specified Adults), federal regulators have taken steps to address the concerns of senior investors.

***The Committee will be asked to discuss SEC and FINRA senior-related initiatives designed to protect the interests of senior investors from possible financial exploitation.***

D. Life Insurance Company Senior-Related Initiatives.

Given the growing population of senior financial consumers, life insurance companies also have begun to establish separate units dedicated to addressing issues associated with suspected instances of potential financial exploitation of seniors.

***The Committee will be asked to discuss life insurance company initiatives to address issues associated with suspected instances of potential financial exploitation of seniors.***

XII. 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.

Life insurance companies have reported improvement in the ease-of-use associated with accessing information within the NAIC Lost Policy Locator Service.

However, frustrations among life insurers still exist to the extent 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 receive an update report on the NAIC Lost Policy Locator Service and will explore life insurers' use of the service.***

**XIII. 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.***

**XIV. Update on NAIC Retirement Security Initiative. The Committee**

Over the past few years, the NAIC has introduced its Retirement Security Initiative to focus state insurance regulatory efforts on the importance of providing an appropriate marketplace to allow Americans to secure their retirement through the purchase of products offered by life insurers.

***The Committee will receive an update report on the NAIC's Retirement Security Initiative.***

**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.**