

DRAFT

**Minutes
Meeting
of the
2019 CEFLI Advisory Committee
Tuesday, February 5, 2019**

A meeting of the Advisory Committee (the "Committee") of The Compliance and Ethics Forum for Life Insurers ("CEFLI") was held on Tuesday, February 5, 2019 at 10:00 AM EST at The Residence Inn in Bethesda, Maryland.

The following individuals participated in the meeting in-person:

Steve Kline (NAIFA)

Larry Kosciulek (FINRA)

Suzanne McGovern (SEC)

Gary Sanders (NAIFA)

The following individuals participated in the meeting via conference call:

Tim Mullen (NAIC)

Michelle Kulish Danielson (American Enterprise)

Jennifer Wheeler (American Fidelity)

Also participating in the meeting were Donald J. Walters, President & CEO of CEFLI and Kelly Ireland, Vice President - Compliance & Ethics of CEFLI. Mallory Bennett, Member Relations, Communications and Meetings Manager of CEFLI participated in the meeting via conference call.

The meeting was called to order by Mr. Walters, who presided. Mr. Walters acted as Secretary of the meeting.

I. Welcome and Introduction.

Mr. Walters welcomed the Committee members and referred to CEFLI's antitrust statement to alert Committee members that an objection would be made to any discussion that might engender a potential violation of the antitrust laws.

II. Approval of Minutes - November 28, 2018 Meeting.

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the November 28, 2018 meeting of CEFLI's Advisory Committee are hereby approved.

III. FINRA 2019 Risk Monitoring and Examination Priorities Letter.

The Committee reviewed FINRA's 2019 Risk Monitoring and Examination Priorities Letter (the "Letter") which identifies those subject matters that FINRA examination activities will focus on in the upcoming year.

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

The Letter identified several areas for examination in the Sales Practice Risks section including:

- Suitability of variable annuity products;
- Senior Investors;

- Anti-Money-Laundering;
- Outside Business Activities and Private Securities Transactions; and
- Supervision.

It was noted that the 2019 Letter was shorter than similar letters issued in past years due to the annual issuance of FINRA's Examination Findings Report which provides additional information on product-related and other sales practice examination findings.

The Committee discussed several areas identified in the Letter to identify their relationship to current sales practice and compliance issues in the life insurance industry. The Letter serves as a good reminder to life insurance company compliance and ethics professionals to explore the subject matters identified in the Letter as areas of possible heightened review during FINRA examination activities.

IV. SEC 2019 Examination Priorities Report.

The Committee also reviewed the recent issuance of the SEC's Office of Compliance Inspections and Examinations 2019 Examinations Priorities Report.

The Report identified several areas for heightened focus during examinations in 2019 including:

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

With respect to senior investors, SEC examination activities continue to find questionable practices related to senior sales and identified that an increasing number of broker-dealers have utilized FINRA Rule 2165 (which permits a temporary hold on funds in the event of suspected senior financial exploitation) and it attempt to address concerns regarding financial exploitation of seniors. The Committee discussions confirm that NAIFA supports FINRA Rule 2165 and has been working with NASAA (the North American Securities Administrators Association) to promote broad adoption model laws to protect seniors from financial exploitation.

It also was noted that regulatory activities are focusing on potential heightened risk areas as a means to refine the efficient use of limited regulatory resources.

V. FINRA 2018 Examination Findings Report.

FINRA also released its 2018 Examination Findings Report. The Examination Findings Report was developed as an outgrowth of the FINRA360 initiative.

The Report identified several compliance-related concerns including suitability for retail customers generally and, specifically, concerns regarding unsuitable variable annuity recommendations.

Other areas of concern included inadequate supervisory systems and lack of documentation of investigations of potentially suspicious activities.

The Committee's discussion noted that, although firms may have appropriate supervisory policies and procedures, recent examination activities indicate that some firms do not follow these policies and procedures. Also, other firms were found to have inadequate supervisory procedures and risk controls.

Firms are encouraged to utilize the information contained within FINRA's Examination Priorities Letter and its Examination Findings Report to provide appropriate education and training to its staff to better understanding comply with FINRA rules.

VI. SEC Regulation Best Interest.

In 2018, the SEC issued proposed rule Regulation Best Interest to clarify the proposed sales standards that would be applicable to broker-dealers and investment advisers when making recommendations to retail investors.

Given that the proposed rule was highly anticipated by the financial services industry, Regulation Best Interest reportedly received some of the highest volume of comments received by the SEC on a rule proposal in recent years.

The SEC also issued a proposal for Form CRS to serve as an appropriate disclosure document to allow retail investors to understand the role of the individual from whom they are receiving financial advice.

The Committee acknowledged that, due to a recent shutdown of the US federal government, the timeline associated with reviewing comments and issuing a final Regulation Best Interest may be delayed.

VII. Possible Revisions to the NAIC Suitability and Annuity Transactions Model Regulation.

The NAIC recently reconstituted its Annuity Suitability Working Group to explore possible revisions to the NAIC Suitability in Annuity Transactions Model Regulation (the "Model Regulation"). The NAIC recently sponsored a two-day Drafting Session in

Chicago and also met in San Francisco at the NAIC's Fall National Meeting to explore further revisions to the Model Regulation.

One of the stated goals of the Working Group was to develop a final draft for possible approval by the NAIC prior to the end of calendar year 2018 to inform the SEC and other regulators of the NAIC's efforts to update its Model Regulation. However, given the challenges associated with identifying all of the possible revisions to the Model Regulation, the Working Group will continue its review of possible revisions to the Model Regulation in 2019.

Several undetermined areas associated with the Working Group's efforts include lack of consensus concerning whether revisions to the Model Regulation should incorporate a "best interest" standard that would be applicable to life insurance as well as annuity products. State insurance regulatory representatives from California, New York and the District of Columbia have indicated their interest in including life insurance as well as annuity products in any revisions to the Model Regulation.

In light of the SEC's proposed Regulation Best Interest, the NAIC will have to evaluate the extent to which they incorporate "best interest" concepts embodied within Regulation Best Interest in any further revisions to the Model Regulation.

The life insurance industry is interested in establishing harmonization or uniformity among sales standards applicable to its business as issued by the NAIC, FINRA and the SEC. Whether this final result can be achieved given the disparate proposed sales standards currently under review by regulatory authorities remains unclear.

VIII. Lack of a “Safe Harbor” - New York Regulation 187.

The Committee acknowledged that, unlike the “safe harbor” found within the NAIC Suitability in Annuity Transactions Model Regulation to allow life insurers to rely upon a broker-dealer’s application of FINRA’s suitability and supervision standards for annuity transactions, recent amendments to New York’s Regulation 187 do not contain such a “safe harbor” provision.

This distinction between the NAIC’s Model Regulation and New York’s Regulation 187 poses several interesting questions including whether FINRA broker-dealers would be willing to enter into a contractual obligation with a life insurer to perform supervisory responsibilities for annuity transactions subject to Regulation 187 and whether compliance with FINRA supervisory rules will be deemed to be adequate by the New York Department of Financial Services to comply with Regulation 187’s requirement “to establish and maintain a system of supervision with respect to insurance producers.”

The Committee’s discussion noted that, due to current broker-dealer obligations to comply with FINRA’s suitability standards, it is unlikely that broker-dealers will conduct training on how to comply with a “best interest” standard under New York Regulation 187.

Future consideration of the application of a “best interest” standard and possible training programs concerning “best interest” standards for broker-dealers may be driven by the final issuance of the SEC’s Regulation Best Interest.

IX. SEC Risk Alert - Advisor Texting and Social Media Use.

The Committee discussed a recent Risk Alert issued by the SEC to outline observations from recent investment adviser examinations concerning practices associated with “electronic messaging” including text/SMS messaging, instant messaging, personal email and personal or private messaging.

Given that the SEC does not anticipate modifying its current books and records rules, firms will be challenged to identify ways in which they can monitor and supervise these activities and also create appropriate records concerning text messaging types of communications.

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 also included recommendations concerning policies and procedures, employee training and attestations, supervisory review and control over devices.

Life insurance companies are encouraged to consider the issues raised by the SEC Risk Alert in formulating their own programs concerning text messaging and other forms of communications by producers.

X. Continuing Education Requirements for Investment Adviser Representatives.

NASAA is reportedly developing a Model Law or Regulation which will mandate that investment adviser representatives complete annual continuing education requirements. (Currently insurance producers and broker-dealer registered representatives are subject to mandatory continuing education requirements.)

The Committee will continue to monitor these developments to determine whether they will be implemented over the months ahead.

The Committee also noted that FINRA is considering changes to its Regulatory Element and annual compliance meeting requirements as well.

XI. NAIC Insurance Data Security Model Law.

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 became the first state to adopt the Model Law and other states including Michigan and Ohio have followed with similar adoptions as well.

Committee discussions also indicated that for purposes of state insurance department financial examinations, the NAIC has developed a pre-breach checklist that examiners will ask to see to confirm that insurers have an appropriate information security program in place. With respect to market regulation, the NAIC’s Market Regulation Handbook Working Group is working on developing a possible post-breach checklist to identify issues that should be considered after discovering a cybersecurity breach.

XII. NYDFS Circular Letter No. 1 (2019).

The Committee noted that the New York Department of Financial Services recently issued a Circular Letter No. 1 (2019) regarding insurers’ use of external consumer data and information sources in underwriting for life insurance.

The Circular Letter identifies two areas of concern: (1) the use of external data sources, algorithms and predictive models which may have a significant potential negative impact on the availability and affordability of life insurance products for

protected classes of consumers; and (2) the use of external data sources often accompanied by a lack of transparency for consumers.

Issues associated with insurers' use of various data sources for life insurance underwriting purposes are under review by the NAIC's Innovation and Technology Task Force as well. Regulators are focused on determining whether various data sources can be used to discriminate against potential purchasers of insurance products.

XIII. FINRA360 Update.

In 2017, FINRA launched its FINRA360 initiative to conduct a comprehensive review of FINRA rules, policies and procedures with the goal of promoting efficiency and effectiveness in its self-regulatory organization role.

FINRA President & CEO, Robert Cook, toured the country to seek comments on how FINRA could improve its overall operational practices.

Several new developments arose out of the FINRA360 initiative including the development of FINRA's Examinations Findings Report. In addition, FINRA's Securities Industry Essentials Exam allows prospective securities professionals to demonstrate their rudimentary knowledge of securities regulation without direct sponsorship by a FINRA member firm.

XIV. State Proposed Fiduciary Rules.

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 service professionals including broker-dealers and investment advisers.

The Committee discussed recent enactment of legislation in the state of Nevada that would expand the definition of those financial professionals (including financial planners) who would be subject to a fiduciary standard in their sales transaction activities.

The Committee also noted that New Jersey is considering a proposal to develop a similar fiduciary standard. Other states considering legislation include Maryland and California.

A key concern regarding the introduction of various fiduciary legislative and regulatory proposals in the states is the degree of complexity these initiatives would introduce into the current sales standards applicable to financial professionals.

XV. FINRA/NAIC Data Sharing.

The Committee heard an update report concerning the initiative between FINRA and the NAIC to share data concerning FINRA disciplinary histories of registered representatives who may also possess state insurance licenses as well.

The NAIC conducts an evaluation of whether individuals who are listed within FINRA disciplinary reports may be identified within the NAIC's licensed insurance producer database. If so, the NAIC shares these data matches with various state insurance departments to allow them to consider whether to take any appropriate action with respect to those producers who may be insurance licensed but also may have may have been subject to securities-related disciplinary actions.

This type of joint information sharing allows regulators to have a better sense of potentially problematic individuals and activities occurring in the marketplace.

XVI. NAIC Lost Policy Locator Service.

The NAIC continues to explore refinements to its Lost Policy Locator Service to assist consumers who may be looking for a lost life insurance policy. As a result of these initiatives, the NAIC has identified lost life insurance policies with death benefits totaling in excess of \$415 million for consumers.

Life insurance companies participate in the Lost Policy Locator Service on a voluntary basis. The NAIC is working closely with life insurance industry organizations such as the ACLI to facilitate ease-of-use with respect to the Service for consumers and life insurers as well.

It was noted that several states have declined to participate in the NAIC's Lost Policy Locator Service. This creates additional administrative burdens on life insurers who must access these state-specific sites to complete their review of possible lost policies.

The NAIC is encouraging as many states as possible to participate in the Lost Policy Locator Service rather than maintain state-specific sites.

XVII. NAIC Committee Assignments.

The Committee reviewed the announcement of 2019 Committee Chairs and Vice Chairs. Committee assignments of key interest to CEFLI member companies include:

NAIC Life Insurance and Annuities (A) Committee will be Chaired by Iowa Commissioner, Doug Ommen, and Stephen Taylor, the District of Columbia Commissioner of Insurance, Securities and Banking, will serve as the Vice Chair.

The NAIC Market Regulation and Consumer Affairs (D) Committee will be chaired by Clara Lindley Myers, Director of the Missouri Department of Insurance Financial Institutions and Professional Registration and, Allen Kerr, Arkansas Commissioner of Insurance will serve as the Vice Chair.

XVIII. NAIC State Ahead Strategic Plan.

The NAIC recently announced its State Ahead Strategic Plan which includes key initiatives to modernize current NAIC databases to enhance use of data by NAIC staff, insurance companies and state insurance regulatory representatives. The State Ahead Strategic Plan will be implemented over a three-year timeline.

XIX. Fraud Awareness.

When asked to identify key areas of potential fraud in the financial services industry, members of the Committee identified crypto currencies, cybersecurity and senior financial exploitation as areas for heightened review for potential fraudulent activities.

XX. Other Business.

There being no further business to discuss, the meeting was adjourned.