

DRAFT

**Minutes
Meeting
of the
2018 CEFLI Advisory Committee
Wednesday, November 28, 2018**

A meeting of the Advisory Committee (the "Committee") of The Compliance and Ethics Forum for Life Insurers ("CEFLI") was held on Wednesday, November 28, 2018 at 10:00 AM EST at The Residence Inn in Bethesda, Maryland.

The following individuals participated in the meeting in-person:

Larry Kosciulek (FINRA)

Suzanne McGovern (SEC)

The following individuals participated in the meeting via conference call:

Susan Burke (SunLife)

George Hanley (Deloitte)

John Landers (CUNA Mutual)

Jim Odland (Thrivent Financial)

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

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 - June 6, 2018 Meeting.

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the June 6, 2018 meeting of CEFLI's Advisory Committee are hereby approved.

III. SEC Rule Proposals.

On April 18, the SEC issued a package of proposed rules to address retail investor relationships with investment advisers and broker-dealers. Three proposed rules were issued:

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

The Committee discussed recent developments with respect to the rule proposals.

It was reported that the SEC has developed several roundtables to gain retail investor reaction to the Form CRS. The experience arising out of the roundtables suggests that retail investors still maintain confusion regarding key financial issues such

as understanding what may constitute an “asset-based fee” and understanding the term “fiduciary.”

Form CRS will be designed to identify the type of relationship and services that may be provided by investment professionals as well as their legal obligations, potential conflicts of interest and applicable fees.

As a result of these roundtable discussions, it was determined that form CRS could benefit from greater simplicity, utilizing “plain English,” defining industry terms and offering clear explanations as to how investment professionals are paid for their services.

In public pronouncements, the SEC has indicated a goal of completing final rule proposals for these initiatives by September 2019.

IV. Possible Revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

The Committee discussed plans to consider possible revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

The Committee heard updates concerning the activities of the NAIC’s Annuity Suitability Working Group. The Working Group met for a drafting session in October to continue work on possible revisions. Though the Working Group had a stated goal of attempting to complete an initial draft with proposed revisions by the end of 2018, the Working Group Chair, Dean Cameron, Idaho Director of Insurance, indicated that the Working Group will not be able to complete revisions by the end of 2018 and will plan to continue its work during 2019.

The NAIC maintains a strong interest in coordinating its effort along with the SEC's work on Regulation Best Interest and any possible Fiduciary Rule that may arise out of the Department of Labor.

The Committee confirmed that FINRA continues to review and have concerns regarding variable annuity sales practices. A related area of focus pertains to the exchange of fixed annuities.

It was acknowledged that, perhaps, the NAIC could provide education and training to allow securities regulators to have a more comprehensive understanding of how insurance is regulated and the characteristics of different types of fixed annuity products.

V. New York Department of Financial Services - Final Amendments to Regulation 187.

The Committee discussed the final amendments to New York's Regulation 187 which applies a best interest standard to sales of both annuity and life insurance products.

The Committee discussed the challenges associated with demonstrating that a producer has acted in the best interest of the consumer. It was acknowledged that application of the best interest standard will present an examination and enforcement challenge.

CEFLI discussions regarding the requirements of Regulation 187 confirm that compliance practices may be driven by outcomes of initial regulatory examination activities.

It was noted that FINRA is aware of and has monitored the final amendments to Regulation 187 but does not foresee the introduction of a best interest standard for annuity transactions in New York as impacting current FINRA examination practices at this time.

VI. SEC Proposed Rules for Disclosure Improvements for Variable Annuity and Variable Life Insurance Products.

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 prospectuses for existing investors. The comment period on the proposed rules expires February 15, 2019.

The SEC has asked financial services firms to provide examples of a possible “mock” summary prospectus. The SEC is also asking for retail investor comments as well.

The Committee discussed that challenges exist with respect to whether certain fixed indexed annuity products may be registered or not registered with the SEC and, accordingly, may or may not be subject to summary prospectus and full prospectus requirements. Therefore, consumers of these products may be receiving different types of disclosures dependent upon whether the product is registered or not registered with the SEC (even though the consumer may not be aware of the registration status of the product).

VII. State Proposed Fiduciary Rules.

In 2018, the US Court of Appeals for the Fifth Circuit vacated the Department of Labor's Fiduciary Rule. As a result of that action, several states have proposed state-specific fiduciary rules to protect the interests of consumers of financial products. However, these rules are often unique on a state-by-state basis and, if enacted into law or promulgated into regulations, may pose significant compliance challenges for financial services organizations.

The Committee noted that the North American Securities Administrators Association (NASAA) has developed a Model Rule including a fiduciary standard.

It also was noted that a goal for the SEC's Regulation Best Interest was to avoid having disparate sales standards across the US.

The Committee acknowledged that a few states have enacted state-specific fiduciary rules. However, it remains to be seen whether introduction of these types of state-specific fiduciary rules may become more widespread.

VIII. FINRA Progress Report on FINRA 360.

The Committee discussed FINRA's efforts to implement FINRA 360; a program designed to solicit input from all stakeholders in order to improve the effectiveness and efficiency of FINRA and its operations.

It was noted that FINRA has listed information on its website to provide interested parties with updates concerning the FINRA 360 initiatives. Comments and recommendations received from various stakeholders will be considered for possible modifications to current FINRA practices.

IX. FINRA’s Securities Industry Essentials Examination.

The Committee discussed the new Securities Industry Essentials Examination which became effective on October 1 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.

The introduction of the SIE Exam was considered to be revenue/cost neutral due to the fact that there is no more cost to take the SIE and Series 7 rather than the Series 7 exam alone.

The Committee discussed the fact 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.

Successful completion of the SIE Exam will be good for four years and individuals may elect to pursue a “top off exam” (e.g., Series 6, Series 7, etc.) within the four year timeframe.

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

The Committee discussed heightened regulatory concern regarding the extent to which life insurers are relying upon various data sources to accelerate the underwriting process for life insurance products.

In light of a movement toward developing “accelerated” underwriting procedures to “enhance the customer experience” at life insurance companies, life insurers are relying upon a wide range of data sources to gather information as part of the life insurance product underwriting process. However, concerns exist with respect to whether certain data sources (e.g., social media) can be verified for accuracy before they are introduced into the underwriting process. The primary concern regarding these activities pertains to unfair discrimination with respect to underwriting for life insurance products.

Similar concerns were expressed years ago with respect to the use of various external data sources (e.g., credit scores) for underwriting property and casualty products.

It was noted that the New York Department of Financial Services recently issued a Section 308 letter to explain the techniques used by life insurers as part of their underwriting process. It is anticipated that future examinations conducted by the New York Department of Financial Services may ask companies to explain the algorithms to underwrite life insurance products.

Moreover, the NAIC Big Data Working Group has begun to explore the question of life insurers’ use of various data sources to ensure that they are being applied to the underwriting process in a non-discriminatory manner.

XI. FINRA/NAIC Data Sharing.

Within the last few years, FINRA has been sharing information concerning disciplinary actions concerning registered representatives with the NAIC. The goal of this initiative is to identify those individuals within securities industry who may have

been subject to disciplinary actions to determine whether they may also be licensed to sell insurance products in various jurisdictions in an effort to allow the state insurance departments within those jurisdictions to consider whether any potential action should be taken against these individuals with respect to their insurance licenses.

This information is given to state insurance regulators but there is no current requirement for them to act upon this information.

The NAIC as well as FINRA are to be commended for working together in a coordinated manner to share this information between federal securities regulators and state insurance regulators to improve overall marketplace practices.

XII. Role of “Robo Advisers” in Securities and Insurance.

Increasingly, retail investors are being recommended to utilize so-called “robo advisers” who conduct asset allocations to match investment objectives for retail investors whose investable assets may not exceed certain thresholds. The Committee noted that assets invested with robo advisers had increased by 80% in the last two years.

Securities regulators have expressed concern that robo advisers are being recommended over other investment options due to the fact that firm representatives often get paid more for recommending the use of robo advisers.

Other concerns pertaining to the fact that the recommendations offered by robo advisers are often too simple and do not constitute full financial planning.

Securities regulators will be examining practices associated with the use of robo advisers in future examination activities.

XIII. NAIC Lost Policy Locator Service.

Over the past several months, the NAIC has developed its Lost Policy Locator Service to assist consumers in life insurance companies to identify potential beneficiaries of loss life insurance policies.

Initially, life insurers expressed concerns regarding the quality of data that was being provided by the Lost Policy Locator Service. However, in response to these concerns, the NAIC improve the quality of data (i.e., removal of duplicate data, etc.) that has allowed the Lost Policy Locator Service to function more efficiently.

However, not all states participate in the NAIC Lost Policy Locator Service and this requires insurers and consumers to visit state-specific websites to obtain the necessary information. Efforts have been undertaken to encourage all states to participate in the NAIC Lost Policy Locator Service. Yet, due to distinctions with respect to state-specific laws and certain states, comprehensive participation by all states in the NAIC Lost Policy Locator Service may not be feasible.

XIV. NAIC Election Results.

The Committee received reports of the recent election for new NAIC officers that took place at the 2019 NAIC Fall National Meeting.

The 2019 NAIC officers are:

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

XV. Fraud Awareness.

The Committee is routinely asked to identify any potential frauds that may be of concern to regulatory authorities and regulated entities.

Areas of potential fraudulent activity included:

- Cybersecurity
- Digital Assets
- Phishing
- Boiler Rooms
- Opportunity Zone Funds

XVI. Contemporary Compliance and Ethics Challenges.

The Committee was asked to identify contemporary compliance and ethics challenges on the horizon for the financial services industry.

Concerns were expressed regarding unpaid arbitration awards. Legislation is being considered to require FINRA to pay unpaid arbitration awards.

FINRA also is considering changes to its examination program by consolidating sales practice, financial responsibility and market regulation practices as part of FINRA's 360 initiative.

XVII. Other Business.

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