

## Agenda

**2018 CEFLI Advisory Committee Meeting**  
**Wednesday, January 24, 2017**  
**10:00 AM - 3:00 PM, EDT**  
**Somerset Room**  
**Hilton Garden Inn**  
**7301 Waverley St.**  
**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 15, 2017 Meeting.</b> | <b>The Committee</b>     |
| <b>IV.</b>  | <b>2018 FINRA Examination Priorities Letter.</b>        | <b>The Committee</b>     |

FINRA recently released its 2018 Examination Priorities Letter that identifies key subject matters that may be the focus of regulatory examination activities by FINRA in 2018. (See copy attached.)

While these examination priorities serve as an alert to the activities of FINRA-registered broker-dealer firms that may be subject to examination, they also serve as key indicators of possible compliance issues all financial service organizations (including life insurance companies) may wish to review. Key subject matters identified within the 2018 Examination Priorities Letter include, among other issues:

- Fraud;
- High Risk Firms and Brokers;
- Business Continuity Planning;
- Cybersecurity;
- Suitability; and
- Crypto Currencies.

***The Committee will be asked to discuss the issues identified within FINRA's 2018 Examination Priorities Letter.***

## **V. 2017 FINRA Examination Findings Report.**

Late last year, FINRA released its 2017 Examination Findings Report which contains highlights of key issues identified during recent examinations. (See copy attached.) The Report (along with the 2018 Examination Priorities Letter) provides helpful guidance for compliance professionals.

Several of the issues highlighted within the Examination Findings Report were anticipated. These issues, among others, include:

- Cybersecurity;
- Outside Business Activities;
- Anti-Money-Laundering Compliance Programs; and
- Product Suitability.

The report was developed as part of the FINRA 360 recommendations offered by several member firms. FINRA expects the Report to evolve over time and plans to issue similar reports in future years.

**The Committee will be asked to discuss the 2017 FINRA Examination Findings Report, the extent to which the Report's findings may have informed FINRA's 2018 Examination Priorities letter and the implications of these information sources for development and review of appropriate compliance strategies.**

## **VI. Recidivist Brokers and High Risk Firms.**

Both the SEC and FINRA have identified a renewed focus on recidivist brokers and high risk firms as part of their regulatory oversight of the securities markets. Both organizations have undertaken new initiatives to identify individuals involved in these types of activities.

### **A. FINRA Develops Ranking of Registered Representatives to Address Recidivist Brokers**

FINRA recently announced that it has ranked all FINRA registered representatives in an effort to target those it believes may pose the most significant threat to investors. The rankings are based on a variety of factors such as prior regulatory disclosures, disciplinary actions and their employment history.

FINRA has indicated that this information will not be made public but, in the event of an on-site examination, examiners may be requesting information to focus

their review on those individuals ranked highest as potential concerns based upon FINRA's rankings.

Earlier this year, FINRA established a separate exam unit dedicated to high risk registered representatives.

This initiative is premised upon FINRA's interest in ridding the securities industry of so-called "rogue" brokers and utilizing its examination resources most effectively by concentrating its examination efforts not on firms and individuals who have demonstrated consistent compliance with securities laws and regulations but those who have not.

#### B. SEC Will be Establishing a Searchable Database of Bad Brokers

SEC Chairman Jay Clayton announced that the SEC is establishing a website which will contain a searchable database of individuals who have been barred or suspended from the securities industry as a result of federal securities law violations.

The website will allow firms and investors to identify "bad actors" who may attempt to shift their fraudulent activities away from securities-licensed activities to other types of sales activities (e.g., insurance sales). This initiative is part of a broader focus on attempting to deter fraudulent activities in the marketplace.

***The Committee will be asked to comment upon these two new initiatives to identify individuals who may serve as recidivist brokers within the securities industry.***

### VII. FINRA/NAIC Data Sharing.

Several months ago, FINRA agreed to share information published through FINRA's disciplinary history reports with the NAIC. It is our understanding that this information provided by FINRA is then shared with various state insurance departments for possible action to determine whether the individuals identified within the disciplinary history reports may be licensed to sell life insurance products and, if so, whether appropriate regulatory actions may need to be taken with respect to the status of their life insurance license by state insurance departments.

Given that FINRA and the SEC will be developing databases dedicated to identifying potentially recidivist brokers (see above), it raises questions concerning whether it may be appropriate to try and coordinate this information with the NAIC.

***The Committee will be asked to discuss efforts between FINRA and the NAIC to share information regarding the disciplinary history of registered representatives and whether it may be appropriate to also consider sharing with the NAIC, information derived from SEC and FINRA databases designed to identify potential recidivist brokers.***

## **VIII. Cybersecurity.**

Cybersecurity represents a significant risk to all organizations including financial services firms.

Over the past several months, state insurance regulators have taken several steps to address these cybersecurity concerns.

The New York Department of Financial Services issued its Cybersecurity Regulation which will require life insurance companies to describe their cybersecurity risk control practices and also to describe the cybersecurity controls that may be in place at third-party vendors with whom a life insurance company may transact business. The New York Department of Financial Services also recently issued a memorandum outlining new examination processes related to cybersecurity exams.

The NAIC also has continued its work on developing a Cybersecurity Model Law which incorporates many of the elements of New York's cybersecurity regulation.

The SEC recently announced that it will continue to focus its regulatory examination efforts on ensuring that appropriate cybersecurity controls exist at investment advisers and broker-dealers.

Life insurance companies are continuing to conduct heightened due diligence on third-party vendors with a view toward ensuring that there are appropriate cybersecurity controls in place before third-party vendors are provided with companies/customer confidential information.

***The Committee will be asked to discuss regulatory concerns regarding potential cybersecurity risks at financial services firms and the NAIC's effort to adopt a Cybersecurity Model Law.***

## **IX. 2018 NAIC Committee Assignments and Charges.**

The NAIC recently announced its 2018 Committee assignments and charges. Though there are many Committees at the NAIC that impact life insurance company operations, the two Committees that have the most direct influence on compliance activities would include: (1) NAIC Life Insurance & Annuities (A)

Committee; and (2) NAIC Market Regulation and Consumer Affairs (D) Committee.

The NAIC announced the following Commissioners to lead the NAIC Life Insurance & Annuities (A) Committee in 2018:

- Chair: Doug Ommen - Commissioner - Iowa; and
- Vice Chair: Jillian Froment - Director - Ohio.

The NAIC announced the following Commissioners to lead the NAIC Market Regulation and Consumer Affairs (D) Committee in 2018:

- Chair: Allen Kerr - Commissioner - Arkansas; and
- Vice Chair: Lori K. Wing-Heier – Director - Alaska Department of Commerce, Community and Economic Development, Division of Insurance.

A list of the 2018 charges for the NAIC Life Insurance & Annuities (A) Committee and the NAIC Market Regulation and Consumer Affairs (D) Committee is attached.

***The Committee will be asked to discuss the 2018 NAIC Committee leadership assignments and the Committee charges for the NAIC Life Insurance & Annuities (A) Committee and the NAIC Market Regulation and Consumer Affairs (D) Committee.***

#### **X. Life Insurance Agents Selling Proprietary Products.**

Life insurance industry distributes its products through a variety of different distribution systems. Many life insurance companies distribute their products through independent agents that have relationships with multiple life insurance companies.

However, some life insurance companies maintain a “captive agent” force that may be limited to selling solely proprietary products offered by one life insurance company.

In these instances, regulators have heard reports that agents are encouraged to sell proprietary products with the understanding that they may be eligible to receive enhanced human resource benefits and/or compensation as a result of their sales activities.

***The Committee will be asked to discuss of their knowledge of whether life insurance agents that may be limited to selling exclusively proprietary***

***products may be receiving enhanced human resource benefits and/or compensation as a result of their sales activities.***

#### **XI. Possible SEC Fiduciary Rule.**

Last year, SEC Chair Clayton testified before the Senate Banking Committee that the SEC plan to make it an agency priority to develop a fiduciary rule which would be designed to “harmonize” with the DOL Fiduciary Rule.

In his remarks, Chair Clayton indicated four steps SEC plans to pursue in an effort to “harmonize” a potential SEC fiduciary rule with the DOL Fiduciary Rule:

1. *Investors must have choice so “they aren’t pushed into a narrow set of circumstances as a result of whatever steps we take.”*
2. *Any rule must have clarity so that “investors know what type of person they are dealing with and they know the obligations owed to them.”*
3. *Any rule must have consistency so that “if you have two different types of accounts but you’re facing the same person – – a retirement account and a non-retirement account – – there ought to be consistency with respect to those accounts.”*
4. *The SEC, DOL and state regulators should coordinate their efforts.*

The Committee recently discussed internal activities at the SEC with respect to possible development of a fiduciary rule.

***The Committee will be asked to share updated perspectives on the SEC’s plans to develop a fiduciary rule and whether such a rule would be applicable solely to broker-dealer sales activities (as distinct from investment advisors) and whether it may be designed to “harmonize” with the DOL Fiduciary Rule.***

#### **XII. New York Department of Financial Services Suitability in Life Insurance and Annuity Transactions - Proposed Amendments.**

On December 27, 2017, the New York Department of Financial Services (“NYDFS”) proposed amendments to New York’s Suitability in Annuity Transactions Rule (11 NYCRR 224) (the “Rule”). (See copy attached.)

The proposed amendments would introduce sweeping changes to the current version of New York’s Suitability in Annuity Transactions Rule.

Foremost among these concerns is the introduction of life insurance policies within the scope of the Rule.

The proposed amendments would also modify the definition of “recommendation” to include “one or more statements or acts” that “reasonably may be interpreted by a consumer to be advised and that results in a consumer entering into or refraining from entering into a transaction” or “is intended by the producer, or an insurer when a producer is involved, to result in a consumer entering into or refraining from entering into a transaction.”

The proposed amendments would expand the definition of “suitability information” to include the “intended use of the policy, including any riders,” and would require a determination of the customer’s financial time horizon “including the duration of existing liabilities and obligations,” and would also require a determination of the customer’s “tolerance of non-guaranteed elements in the policy, including variability in premium, cash value, death benefit, or fees....”

In addition, the proposed amendments to the Rule would introduce a “best interest” standard that does not exist under the current version of the Rule.

***The Committee will be asked to discuss, among other matters, the following issues pertaining to the proposed amendments to the NYDFS Rule including:***

- ***Expanding the scope of the rule to include life insurance policies;***
- ***Modifying the term “recommendation;”***
- ***Changing suitability analysis to include consideration of “all available products, services and transactions;”***
- ***Creating a best interest standard;***
- ***Increasing the types of disclosures to be provided to a consumer; and***
- ***Apply the Rule’s requirements to every producer in the transaction, regardless of whether the producer had any direct contact with the consumer.***

### **XIII. NAIC Annuity Suitability Working Group Activities.           The Committee**

The NAIC Annuity Suitability (A) Working Group recently issued a draft of proposed modifications to incorporate a “best interest standard” to the NAIC Suitability in Annuity Transactions Model Regulation. (See copy attached.) Currently, the Working Group has not expanded the scope of the Model Regulation to include life insurance sales.

The Working Group, chaired by Idaho Director Dean Cameron, plans to field comments on the draft proposed modifications over the next several weeks and

will incorporate these comments into a revised Model Regulation prior to the 2018 Spring National Meeting.

The Working Group's objective would be to move to formal adoption of a revised Model Regulation by the 2018 Summer National Meeting.

***The Committee will be asked to discuss the proposed “best interest standard” modifications to the NAIC Suitability in Annuity Transactions Model Regulation and whether the Working Group may expand the scope of its proposal to include a “best interest standard” applicable to life insurance sales as well.***

#### **XIV. DOL Fiduciary Rule.**

#### **The Committee**

The US Department of Labor (“DOL”) has delayed implementation of the enforcement mechanisms for the DOL’s Fiduciary Rule from January 1, 2018 to July 1, 2019. The delay was proposed, in part, to allow the DOL to review the comments submitted on the Rule in order to comply with the request of President Trump in his February 3, 2017 memorandum to the DOL.

It may be important to note that many essential elements of the DOL Fiduciary Rule (e.g., best interest standard’s) remain in place and, therefore, require life insurance companies and their producers to comply with those provisions.

However, given the degree of uncertainty that exists with regard to the final determination of the DOL with respect to the elements of the Rule, compliance professionals continue to monitor these developments closely.

Moreover, several class-action lawsuits remain outstanding with respect to the application of the DOL Fiduciary Rule.

***The Committee will be asked to discuss any updated information concerning plans by the DOL to provide additional guidance and possibly modify its Fiduciary Rule.***

#### **XV. “Account Takeovers”**

#### **The Committee**

The life insurance industry has recently incurred a series of fraudulent activities that have been described as “account takeovers.” These events involve fraudulent use of customer information in order to gain access to a customer’s online portal at a life insurance company to request loans against life insurance policies or surrenders of annuity contracts.

The scope and volume of these activities has generated serious concerns among life insurance companies and law enforcement agencies including the FBI.

CEFLI will be convening a Fraud Issue Forum to explore, among other issues, the current state of “account takeover” activity in the life insurance industry.

***The Committee will be asked to discuss their awareness of current trends with respect to “account takeover” activities.***

**XVI. Senior Sales.**

**The Committee**

Over the past several months, the Committee has focused its discussions on concerns related to inappropriate sales to seniors and suspected instances of financial abuse of elders.

As we enter a new legislative season, it is anticipated that more states will begin to enact legislation to allow financial services firms to suspend transactions in the event they suspect the transaction in question may be subject to financial abuse of the elderly.

Also, within the past year, FINRA adopted new Rule 2165 (Financial Exploitation of Specified Adults) to permit member firms to place temporary holds on disbursement of funds or securities when there is a reasonable belief of financial exploitation and amendments to FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the contact information for a trusted person for the customer’s account.

***The Committee will be asked to discuss key initiatives related to senior sales activities at the state and federal level.***

**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.

Launched approximately one year ago, the NAIC Lost Policy Locator Service has been very successful in identifying potential beneficiaries of life insurance policy proceeds for those companies that participate in the Service on a voluntary basis.

Over the past several months, the NAIC has taken steps 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.***

#### **XVIII. FINRA General Knowledge (Securities Industry Essentials) Exam.**

FINRA recently received approval of new rules to consolidate its examination practices. (See FINRA Regulatory Notice 17-30 attached.) As part of these rules, FINRA has restructured the representative-level qualification requirements to require all representative applicants to take a general knowledge exam (i.e., though Securities Industry Essentials (“SIE”).

Individuals who are not associated persons with member firms (such as individuals among the general public, are also eligible to take the SIE.

***The Committee will be asked to discuss the rationale underlying these examination rule modifications.***

#### **XIX. 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.***

#### **XX. Contemporary Compliance and Ethics Challenges.**

***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.***

#### **XXI. Other Business.**