**DRAFT**

**Minutes**
**Meeting**
**of the**
**2018 CEFLI Advisory Committee**
**Wednesday, January 24, 2018**

A meeting of the Advisory Committee (the "Committee") of The Compliance and Ethics Forum for Life Insurers ("CEFLI") was held on Wednesday, January 24, 2018 at 10:00 AM EST at The Hilton Garden Inn in Bethesda, Maryland.

The following individuals participated in the meeting in-person:

George Hanley (Deloitte)

Larry Kosciulek (FINRA)

Suzanne McGovern (SEC)

Tim Mullen (NAIC)

The following individuals participated in the meeting via conference call:

Michele Kulish Danielson (American Enterprise)

Maureen Mulville (Illinois Mutual)

Gary Sanders (NAIFA)

Also participating in the meeting were Donald J. Walters, President & CEO of CEFLI and Kelly Ireland, Vice President - Compliance & Ethics 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 - November 15, 2017 Meeting.

On motion, duly made and seconded and unanimously carried, the Committee:

RESOLVED, that, the Minutes of the November 15, 2017 meeting of CEFLI's Advisory Committee are hereby approved.

## III. 2018 FINRA Examination Priorities Letter.

Each year, FINRA releases an annual Examination Priorities Letter that identifies key subject matters that may be the focus of regulatory examination activities by FINRA.

The Committee discussed several of the priorities identified within the 2018 Examination Priorities Letter. Specifically, the Committee reviewed issues associated with high-risk brokers and firms, cybersecurity issues and suitability standards.

As part of this discussion, it also was noted that the SEC plans to issue its Examination Priorities within the next several weeks.

## IV. 2017 FINRA Examination Findings Report.

The Committee acknowledged that FINRA released its 2017 Examination Findings Report that highlighted key issues identified during recent examinations. The

Committee discussed some of the issues identified in the Examination Findings Report which, in conjunction with the 2018 Examination Priorities Letter, can serve as a useful source of helpful guidance for compliance professionals.

Through their examination activities, FINRA identified several issues in the Examination Findings Report that represented significant issues that member firms should focus on in terms of ensuring appropriate policies and procedures are in place to meet the objectives of FINRA requirements. They included: cybersecurity, outside business activities, anti-money laundering programs and product suitability issues.

It is anticipated that FINRA will be issuing similar types of Examination Findings Reports in future years.

## V. Recidivist Brokers and High Risk Firms.

As was noted during the discussion of the 2018 FINRA Examination Priorities Letter, both FINRA and the SEC are taking steps to focus on recidivist brokers and high risk firms as part of their regulatory oversight of the securities markets.

FINRA has developed a ranking of 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. It was noted that FINRA has conducted a comprehensive analysis of the number of violations, the egregiousness of violations and the pattern of violations in order to identify potential high-risk brokers and firms that may be of concern.

Though this information will not be made available to the general public, it will be provided to examiners as they conduct examination activities that may include broker-dealer firms with individuals identified as high risk registered representatives.

The information derived through this analysis will allow FINRA to utilize its examination resources more effectively to address those individuals who continue to fail to comply with FINRA requirements.

The SEC also reported it will be establishing a searchable database of questionable brokers who have been barred or suspended from the securities industry as a result of federal securities law violations. The SEC is also exploring whether to include registered investment advisers in the database.

The Committee acknowledged that these developments may be indicative of a movement to place greater emphasis upon data analytics to support future regulatory examination activities in both life insurance and securities regulation.

## VI. FINRA/NAIC Data Sharing.

FINRA has been providing the NAIC with information concerning FINRA's disciplinary reports in an attempt to alert state insurance regulators of individuals who have been subject to disciplinary actions on behalf of FINRA.

The Committee discussed the fact that these reports are provided to various state insurance departments but that the state insurance departments are not obligated to act upon the information received (though several states have been active in reviewing and acting upon this information).

The Committee discussed that there are challenges attempting to coordinate the information contained within the FINRA CRD database versus the NAIC's producer database in order to attempt to identify individuals who may be registered with both FINRA and state insurance departments. Efforts to resolve these issues remain ongoing.

Nevertheless, this type of information sharing activity is very helpful in attempting to identify individuals who may be considered recidivist brokers who may be subject to securities law violations and who may be interested in obtaining an insurance license to continue to conduct business in various states or vice versa.

## VII. Cybersecurity.

Cybersecurity issues continue to remain a challenge for all organizations across the financial services industry.

Over the past several months, 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 security controls that may be in place at third-party vendors with whom a life insurance company may transact business.

Many of the elements of the New York Cybersecurity Regulation were adopted into a revised version of the NAIC Cybersecurity Model Law which was recently approved by the NAIC. The NAIC is taking the elements of the Cybersecurity Model Law and incorporating it into the NAIC Market Regulation Handbook.

It was noted that challenges exist with respect to the cybersecurity expertise of those conducting examinations. It appears that the initial focus of examination activities may be placed upon verifying the existence of appropriate cybersecurity policies and procedures and controls being in place. A future challenge may lie in assessing the effectiveness of cybersecurity controls.

The Committee's discussion recognized the challenges associated with verifying the adequacy of cybersecurity controls at third-party vendor organizations. Moreover, many life insurance companies are challenged to supervise compliance with cybersecurity risk control requirements at third-party vendors. Therefore, companies have placed a heightened focus on conducting appropriate due diligence with third-party vendors concerning their cybersecurity practices before entering into agreements with third-party vendors to perform services on behalf of companies.

**VIII. 2018 NAIC Committee Assignments and Charges.**

The Committee noted that the NAIC recently confirmed its leadership of several key committees impacting life insurance company compliance strategies and operations.

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 also 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.

## IX. Possible SEC Fiduciary Rule.

Since issuance of the DOL Fiduciary Rule, the Committee has focused its attention on the possible issuance of a similar rule by the SEC.

SEC Chairman Clayton has issued public statements over the past several months indicating that development of a rule pertaining to the practices of broker-dealers and investment advisers related to retail investors has been identified as a priority for the SEC.

The Committee discussed the fact that the SEC staff has been working assiduously to develop a rule related to sales standards for retail investors. Though it is uncertain as to when such a rule may be issued, the Committee's discussion indicated that the timeline for issuance of a proposed rule may take place within the next several months.

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

The New York Department of Financial Services recently issued proposed amendments to New York's Regulation 187 which encompasses New York's current suitability standards related to annuity products. The proposed amendments also would subject life insurance transactions (as well as annuity transactions) to a “best interest” standard. Moreover, the proposed amendments also contemplate increasing the types of disclosures to be provided to consumers.

The Committee acknowledged that significant concerns exist regarding attempting to subject life insurance products to a best interest or suitability analysis.

The New York Department of Financial Services is accepting comments on the proposed revisions to Regulation 187. It is probable that, after receiving these comments, the New York Department of Financial Services may re-propose a new set of amendments to address concerns expressed through the comment period.

## XI. NAIC Annuity Suitability (A) Working Group Activities.

Last year, the NAIC's Annuity Suitability (A) Working Group was reconstituted to consider possible modifications to the NAIC Suitability in Annuity Transactions Model Regulation.

The Working Group, Chaired by Idaho Director Dean Cameron, recently issued a draft of proposed modifications to incorporate a "best interest" standard in the NAIC Suitability in Annuity Transactions Model Regulation.

In remarks at the CEFLI Annual Conference last Fall, Director Cameron indicated that the Working Group's objective would be to move to formal adoption of a revised Model Regulation by the 2018 NAIC Summer National Meeting.

It also has been reported that the leadership of the Working Group has been attempting to meet with representatives of the DOL and the SEC in order to promote harmonization across sales standards that may be applicable to life insurance company products.

**XII. DOL Fiduciary Rule.**

The Committee continued to identify concerns expressed over the compliance requirements associated with the DOL Fiduciary Rule. It was noted that several companies have dedicated significant human and financial resources to develop appropriate compliance systems to address the requirements of the DOL Fiduciary Rule.

Though the DOL delayed implementation of the enforcement mechanisms for the Fiduciary Rule from January 1, 2018 to July 1, 2019, many essential elements of the DOL Fiduciary Rule continue to remain in place.

The uncertain future of the DOL Fiduciary Rule places significant burdens upon companies and their compliance professionals regarding the appropriate steps that should be taken to address the Rule's requirements. As a result, many compliance professionals across the life insurance industry are monitoring these developments very closely in order to develop appropriate strategies accordingly.

The Committee also acknowledged that ongoing litigation continues to take place challenging the substantive elements and appropriate administrative procedures used to develop the DOL Fiduciary Rule which could place the future of the DOL Fiduciary Rule in jeopardy.

**XIII. "Account Takeovers."**

The life insurance industry has recently incurred a series of fraudulent activities that have been described as "account takeovers." These activities 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.

Given the volume and scope of these activities, the FBI has expressed interest in working with life insurance companies to address these concerns.

CEFLI convened an Antifraud Issue Forum of life insurance company representatives to share information concerning the types of fraudulent intrusions companies have been encountering and to explore possible remedies. The Issue Forum will continue to meet over the months ahead to gauge the extent to which these types of "account takeover" activities continue in the life insurance industry.

**XIV. Senior Sales.**

The Committee also discussed ongoing concerns regarding Senior Sales activities.

Both the SEC and FINRA have played a leadership role in addressing concerns regarding fraudulent sales activities with seniors. The SEC has representation on the federal Elder Justice Council which coordinates the activities of several federal agencies to address concerns regarding seniors. FINRA also has established a Senior Help Line to raise awareness of potential fraudulent issues for elderly consumers.

The Committee noted that there is now a box on Suspicious Activity Reports (SARs) that will allow an organization to identify whether they suspect elder exploitation may have taken place with respect to the subject matter of the submission of SARs.

In 2018, the SEC will be analyzing the submission of SARS to determine whether the nature of the activities reported on the SARS may implicate concerns regarding senior sales activities.

FINRA also will be introducing a rule that would permit broker-dealers to suspend transactions in the event there may be concerns regarding potential elder financial abuse.

## XV. NAIC Lost Policy Locator Service.

The Committee discussed recent developments pertaining to the NAIC's Lost Policy Locator Service.

The NAIC's Lost Policy Locator Service receives requests from consumers which are then matched with information pertaining to unclaimed life insurance benefits. Once a match is identified, that information is reported back to state insurance regulators through the NAIC's Lost Policy Locator Service.

Several states (e.g., New York, Illinois and Michigan) have elected to maintain their own state-specific lost policy locator services which pose additional burdens for life insurance companies attempting to provide this information voluntarily. The NAIC has been encouraging all states to participate in the NAIC's Lost Policy Locator Service.

To address these concerns, the NAIC is exploring development of a web-based system that would facilitate the submission of data so that the NAIC's Lost Policy

Locator Service can communicate more easily with company systems to expedite the timeliness and accuracy of information submitted.

**XVI. FINRA General Knowledge (Securities Industry Essentials) Exam.**

FINRA recently received approval of new rules to consolidate its examination practices. FINRA has restructured the representative-level qualification requirements to require all representative applicants to take a general knowledge exam.

As a result, individuals who are not associated persons with member firms (such as individuals among the general public) are eligible to take the Securities Industry Essentials examination.

An outline of questions posed on the Securities Industry Essentials examination is available for review by the general public.

**XVII. Contemporary Compliance and Ethics Challenges.**

The Committee discussed other contemporary compliance and ethics challenges.

The Committee acknowledged possible proposals by FINRA to modify its outside business activities and private securities transaction rules to more directly address concerns regarding practices pertaining to “selling away” at broker-dealer firms.

Also, the Committee noted that the increased use of crypto currencies continues to be another source of regulatory concern.

**XVIII. Other Business.**

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