cefli | COMPLIANCE & ETHICS FORUM FOR LIFE INSURERS

Agenda

2018 CEFLI Advisory Committee Meeting
Wednesday, June 6, 2018
10:00 AM - 3:00 PM, EDT
Somerset Room
Hilton Garden Inn
7301 Waverley St.
Bethesda, MD

Dial-in: 1 (877) 699-4804
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I.	**Welcome and Introduction.**	**Donald J. Walters**
II.	**Antitrust Statement.**	**Donald J. Walters**
III.	**Approval of Minutes – January 24, 2018 Meeting.**	**The Committee**

IV. SEC Rule Proposals.

On April 18, the SEC voted to issue a package of proposed rules to address retail investor relationships with investment advisers and broker-dealers. These proposed rules have been long awaited by the financial services industry.

The proposed rules were issued in three forms:

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

The SEC is seeking comment on these proposals during the 90 day period following the publication of the proposed rules in the Federal Register (i.e., published on May 9 / comment period expires on August 7).

(Given that the SEC's proposed rules comprise over 1000 pages, a link to each of the proposed rules is set forth below.)

Regulation Best Interest:

https://www.federalregister.gov/documents/2018/05/09/2018-08582/regulation-best-interest

Investment Adviser Interpretations:

https://www.federalregister.gov/documents/2018/05/09/2018-08679/proposed-commission-interpretation-regarding-standard-of-conduct-for-investment-advisers-request-for

Form CRS – Relationship Summary:

https://www.federalregister.gov/documents/2018/05/09/2018-08583/form-crs-relationship-summary-amendments-to-form-adv-required-disclosures-in-retail-communications

The Committee will be asked to discuss the recent SEC proposed rules pertaining to broker-dealer and investment advisor interactions with retail investors and their potential impact upon future compliance strategies in the life insurance industry.

V. DOL Fiduciary Rule.

Since the Committee's January 24, 2018 meeting, several developments impacting the future of the DOL Fiduciary Rule have taken place.

On March 15, the US Court of Appeals for the Fifth Circuit issued a 2-1 ruling to vacate the DOL Fiduciary Rule.

The appeal, which was brought on behalf of several organizations including the US Chamber of Commerce, the Financial Services Institute (FSI), the Securities Industry and Financial Markets Association (SIFMA), the National Association of Insurance and Financial Advisors (NAIFA), the American Council of Life Insurers (ACLI) and the Insured Retirement Institute (IRI), among others, arose out of an earlier decision issued by the US District Court for the Northern District of Texas which upheld the DOL Fiduciary Rule.

Recently, the AARP and several states applied for an "en banc" hearing before the entire Fifth Circuit to appeal its ruling to vacate the DOL Fiduciary Rule. The request for an "en banc" hearing was denied by the Fifth Circuit.

On May 7, the DOL issued a Field Assistance Bulletin that provides that financial institutions may continue to rely upon the temporary enforcement relief policy that the DOL adopted earlier this year in which the DOL indicated they will not pursue claims against fiduciaries "who are working diligently in good faith to comply with the impartial conduct standards for transactions that would have been exempted under the BIC Exemption or Principal Transactions Exemption or treat such fiduciaries as violating the applicable prohibited transaction rules" pending the DOL's issuance of additional guidance.

The future of the DOL Fiduciary Rule remains uncertain. Thus far, the DOL has not indicated an intent to appeal the Fifth Circuit decision to vacate the Rule. However, the DOL continues to be subject to its mandate to review the rule for possible revisions based on a memo issued by President Trump to the DOL in February 2017.

The Committee will be asked to discuss their views regarding the implications of these developments on the future of the DOL Fiduciary Rule and the potential impact these outcomes may have upon life insurance company compliance strategies.

VI. NAIC Annuity Suitability (A) Working Group.

The NAIC Annuity Suitability (A) Working Group met recently in Kansas City to conduct a Drafting Session to review various comments submitted on the proposed modifications to the NAIC Suitability in Annuity Transactions Model Regulation with the goal of developing a revised version of the Model Regulation in anticipation of the NAIC Summer National Meeting in early August.

(See copy attached of the proposed revisions to the NAIC Suitability in Annuity Transactions Model Regulation.)

The leadership of the Working Group made clear at the outset of the Drafting Session that the Working Group's review of the NAIC Suitability in Annuity Transactions Model Regulation will not consider including life insurance products into its revisions and will focus solely upon application of the Model Regulation to sales of annuity products.

The Working Group has reportedly met with the leadership of the DOL and the SEC in an attempt to seek harmonization pertaining to sales standards impacting the sale of life insurance and annuity products.

Ideally, the Working Group would like to finalize a set of draft revisions to the NAIC Suitability in Annuity Transactions Model Regulation in order to provide a copy of the proposed revisions to the Model Regulation as an attachment to a comment letter to be submitted to the SEC in response to the SEC's Proposed Rules pertaining to broker-dealer and investment advisor interactions with retail investors.

The Committee will be asked to discuss developments pertaining to the activities of the NAIC's Annuity Suitability (A) Working Group and possible revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

VII. New York Department of Financial Services - Re-Proposed Amendments to Regulation 187.

The New York Department of Financial Services recently issued re-proposed amendments to New York's Regulation 187. The re-proposed amendments were issued in response to comments received by life insurance companies and other interested parties on the original proposal to amend New York's Regulation 187. (See copy attached.)

Most significant amongst the provisions of the re-proposed amendments is the fact that life insurance products as well as annuity products continue to remain subject to a "best interest" standard within the proposed amendments to Regulation 187.

If the re-proposed amendments to Regulation 187 go into effect, New York will be the only state in the country to subject life insurance products to a "best interest" standard.

The Committee will be asked to discuss the re-proposed amendments to New York's Regulation 187 and its impact upon compliance strategies within the life insurance industry.

VIII. SEC 2018 Examination Priorities. **The Committee**

Subsequent to the Committee's January 24, 2018 meeting, the SEC's Office of Compliance Inspections and Examinations issued its 2018 Examinations Priorities Letter. (See copy attached.)

The Letter indicates several areas of focus for the SEC in examining interactions of broker-dealers and investment advisers with retail investors. They include:

- Disclosure of the Costs of Investing;
- Electronic Investment Advice;
- Senior Investors and Retirement Accounts;
- Mutual Funds and Exchange Traded Funds (ETF's);
- Cybersecurity; and
- Anti-money-laundering programs.

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

IX. FINRA Progress Report on FINRA 360.

One of the key initiatives for new FINRA President & CEO, Robert Cook, was initiation of FINRA 360; a program designed to solicit input from all stakeholders in order to improve the effectiveness and efficiency of FINRA and its operations.

In April, FINRA issued a Progress Report on several accomplishments associated with the FINRA 360 initiatives. (See copy attached.)

Among these findings include the following:

- Integrating two Enforcement programs into a single unified structure;
- Releasing and Examinations Findings Report detailing observations from prior year's examinations;
- Launching a Small Firm Help line;
- Increasing funding for training of examiners and regulatory coordinators; and
- Updating FINRA's Advisory and Governance Committees to enhance transparency engage interested parties.

The Committee will be asked to discuss the FINRA 360 initiative and the key outcomes reported in the Progress Report.

X. FINRA Regulatory Notices.

1. Regulatory Notice 18-09 - Outside Business Activities and Private Securities Transactions.

   FINRA issued Regulatory Notice 18-09 requesting comment on proposed revisions to its Outside Business Activities Rule and Private Securities Transactions Rule to address concerns regarding "selling away" from broker-dealers.

2. Regulatory Notice 18-15 - Heightened Supervision Guidelines.

   FINRA issued Regulatory Notice 18-15 that provides guidance on implementing heightened supervision procedures for individuals with a past history of misconduct.

3. Regulatory Notice 18-16 - High-Risk Brokers and Firms That Employ Them.

   FINRA is seeking comment on proposed rule amendments that would impose additional restrictions on firms that employ brokers with a history of significant past misconduct.

The comment period for Regulatory Notice 18-16 is scheduled to expire on June 29, 2018.

(See copies of relevant FINRA Regulatory Notices attached.)

The Committee will be asked to discuss these FINRA Regulatory Notices and the concerns that underlie their issuance for consideration by life insurance company compliance and ethics professionals.

XI. Limited Long-Term Care Insurance.

The NAIC is exploring development of a Model Law and Model Regulation related to limited long-term care insurance. Limited long-term care insurance is a form of long-term care coverage that last in duration for only one year and is generally significantly less expensive than a traditional long-term care insurance policy. (See copies of the current versions of the Model Law and Model Regulation attached.)

Many states will consider possibly enacting the Model Law or adopting the Model Regulation in 2019.

It is anticipated that limited long-term care insurance may be in high demand in the years ahead as an affordable option to traditional long-term care insurance.

The Committee will be asked to discuss their awareness of limited long-term care insurance and the NAIC's efforts to develop a Model Law and Model Regulation pertaining to these products.

XII. Restructuring of FINRA Securities Examinations.

FINRA recently received approval for new rules to consolidate its examination practices. (See FINRA Regulatory Notice 17-30 attached.)

The restructuring of FINRA's securities examinations now requires all registered representatives to take a General Knowledge Exam on Securities Industry Essentials. The General Knowledge Exam is also open to members of the general public.

The Committee will receive an update concerning the restructuring of FINRA's examination program.

XIII. Department of Veterans Affairs - Professional Examination Reimbursement Program.

The US Department of Veterans Affairs (VA) maintains a program that reimburses military veterans for the cost of taking the insurance producer licensing exam.

To be eligible for the VA examination reimbursement, a veteran must live in a state that participates in the VA program and states must have their licensing examinations approved by the VA. Industry organizations like NAIFA and the ACLI have contacted all state insurance departments requesting them to participate in this benefit for veterans. Currently, 29 states participate in the program.

The Committee will receive background on the VA Examination Reimbursement Program and efforts across the states to participate in the program for the benefit of veterans.

XIV. General Data Protection Regulation.

On May 25, the European Union's General Data Protection Regulation (GDPR) became effective. Companies that markets goods or services to EU residents may be subject to the requirements of the GDPR.

Some of the key privacy and data protection elements of the GDPR include:

- Requiring the consent of subjects for data processing;
- Anonymizing collected data to protect privacy;
- Providing data breach notifications;
- Safely handling the transmission of data across borders; and
- Requiring certain companies to appoint a Data Protection Officer to oversee GDPR compliance.

The Committee will be asked to discuss the extent to which their organizations have been subject to the requirements of GDPR and its impact upon current cybersecurity and privacy compliance strategies.

XV. Senior Safe Act.

On May 24, President Trump signed into law the Senior Safe Act.

The Senior Safe Act extends immunity from liability to certain individuals, who, in good faith and with reasonable care, disclose the suspected exploitation of a senior citizen to a regulatory or law enforcement agency. The immunity would apply to certain financial service industry organizations including life insurance companies, broker-dealers and investment advisors who have received specified training related to identifying and reporting the suspected exploitation of the senior citizen.

The Committee will be asked to discuss the implications of the Senior Safe Act for financial services organizations and whether efforts have begun to provide the appropriate training to assist company representatives in identifying and reporting suspected instances of senior exploitation.

XVI. FINRA/NAIC Data Sharing.

FINRA agreed to share information published through FINRA's disciplinary history reports with the NAIC. It was reported that the NAIC, in turn, shared this information 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.

The Committee has discussed efforts to coordinate the transmission of data between FINRA and the NAIC to allow the review of this regulatory information to be conducted in a more efficient manner.

The Committee will receive an update concerning efforts between FINRA and the NAIC to share information regarding the disciplinary history of registered representatives.

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.

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. 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.

XIX. 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.

XX. Other Business.