DRAFT

Minutes
Meeting
of the
2019 CEFLI Advisory Committee
Tuesday, June 18, 2019

A meeting of the Advisory Committee (the "Committee") of The Compliance and Ethics Forum for Life Insurers ("CEFLI") was held on Tuesday, June 18, 2019 at 10:00 AM EDT 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)

Tim Mullen (NAIC)

The following individuals participated in the meeting via conference call:

Gary Sanders (NAIFA)

Susan Voss (American Enterprise)

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 - February 5, 2019 Meeting.

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

RESOLVED, that, the Minutes of the February 5, 2019 meeting of CEFLI's Advisory Committee are hereby approved.

III. SEC Regulation Best Interest and Form CRS Relationship Summary.

The Committee discussed the issuance of the SEC's Regulation Best Interest and Form CRS Relationship Summary.

The Committee acknowledged that issuance of Regulation Best Interest was a key priority for the SEC over the past several months. The SEC reportedly received over 6000 comments on the proposed regulation.

The SEC wanted to issue Regulation Best Interest as soon as possible; especially, given the growing number of states that have introduced various fiduciary laws and regulations.

Though Regulation Best Interest does not define the term "best interest," it does require firms, among its other provisions, to identify and disclose conflicts of interest and to take steps to mitigate material conflicts of interest.

Regulation Best Interest is scheduled to become effective on June 30, 2020. Life insurance companies and other financial services firms are taking steps to analyze the impact of Regulation Best Interest on their businesses and to develop appropriate compliance strategies.

The SEC held various regional roundtables over the last several months with retail investors. The roundtable discussions indicated that investors do not have a clear understanding of the costs of their transactions as well as the status (i.e., broker-dealers representative, investment adviser, insurance agent, etc.) of the adviser that may be providing financial advice.

Form CRS is designed to enhance consumer understanding of these important elements of receiving financial advice.

IV. Other Possible Implications Arising Out of Regulation Best Interest.

The Committee also discussed other possible implications arising out of the SEC's issuance of Regulation Best Interest.

The Committee acknowledged that several states have proposed fiduciary legislation and regulations to require individuals providing financial advice to abide by a fiduciary standard of conduct. Some have taken the view that Regulation Best Interest may not impose as stringent a sales standard of conduct as the fiduciary standard contained within various legislative and regulatory proposals offered by the states. In light of this perspective, it may be anticipated that other states may introduce their own unique fiduciary legislative and regulatory proposals over the months ahead.

The Committee also discussed the impact of Regulation Best Interest upon possible revision or rescission of current FINRA rules; specifically, FINRA Rule 2111 (suitability).

The Committee discussed the fact that FINRA is examining the potential impact of Regulation Best Interest upon existing FINRA rules as well as the role that FINRA may play in enforcing compliance with Regulation Best Interest. It is anticipated that FINRA will establish educational programs within the coming months to update firms regarding potential changes that may/may not take place with respect to FINRA rules in light of the issuance of Regulation Best Interest.

The NAIC Annuity Suitability (A) Working Group is also conducting modifications to the NAIC Suitability in Annuity Transactions Model Regulation. These discussions will be informed by the issuance of Regulation Best Interest.

Given that each of these developments are interdependent upon one another (e.g., a potential change in FINRA Rules could impact key provisions of the NAIC Suitability in Annuity Transactions Model Regulation), the Committee will continue to monitor these developments over the months ahead. The life insurance industry (and other financial services industries and industry organizations) has expressed interest in attempting to “harmonize” sales standards pertaining to the sale of life insurance and annuity products so companies and their representatives will not have to work through a “patchwork quilt” of applicable laws and regulations.

V. DOL Fiduciary Rule.

Recent industry media reports suggest that it is anticipated that the US Department of Labor ("DOL") plans to issue a revised version of its previous Fiduciary Rule prior to the end of 2019. These same media reports indicate that the revised Fiduciary Rule will be designed to comport with the requirements of the SEC's Regulation Best Interest.

VI. Innovation-Related Regulatory Developments.

The Committee discussed several innovation-related regulatory developments impacting the marketplace.

FINRA recently established its new Office of Innovation that will serve as a central point for coordination of issues related to significant financial innovations. The Office of Innovation will seek to enhance FINRA's ability to identify, understand and foster financial innovation "in a manner that strengthens investor protection and market integrity."

The SEC also has established a Strategic Hub for Innovation and Financial Technology ("FinHub"). The FinHub will provide a portal through which the industry and the public can engage directly with SEC staff on innovation ideas and technological developments.

The NAIC has established the NAIC Innovation and Technology (EX) Task Force which will be examining the impact of current laws and regulations on the development of innovations in the insurance sector.

Each of these initiatives acknowledges the growing importance of innovation within the financial services sector in the interest of regulators in learning more about these developments and their potential impact on the financial services marketplace.

VII. NAIC Innovation and Technology (EX) Task Force.

The NAIC has established its NAIC Innovation and Technology (EX) Task Force to explore developments related to innovation initiatives in the insurance industry. One of the initial areas of focus for the Task Force is the role that anti-rebating laws play in the states. For example, some have taken the view that providing a “wearable” (e.g., a Fitbit, step tracker, etc.) to a consumer to allow the consumer to potentially receive more favorable rates on life insurance products may be considered a “rebate” under some state anti-rebating laws. The Task Force will be examining the propriety of anti-rebating laws in the current innovation environment.

To the extent that these types of initiatives have been deemed to be risk mitigation in the marketplace, they have received a generally favorable reaction from state insurance regulators (versus a pure rebate such as agents paying commissions to clients.) It remains to be seen whether the Task Force will offer a recommendation concerning whether current anti-rebating laws may need to be modified in light of new innovation developments.

As part of this initiative, the NAIC has established a list of key contacts in each state insurance department that will serve as a contact for innovation ideas in various states.

Another area that is being explored by the NAIC is the use of "big data" in accelerated underwriting that is being reviewed by the NAIC's Big Data (TX) Working Group. Insurer use of "big data" has been explored by regulatory authorities in the property and casualty marketplace but the scope of the work of the Working Group has now been expanded to include the marketplace for life insurance and annuity products.

The Working Group is exploring the nature of the marketplace for "big data" used by life insurance companies and steps insurers may be taking to confirm the accuracy of information being provided by data vendors. (There is a possibility that this issue will be reassigned to the NAIC Life Insurance and Annuities (A) Committee for further review.)

VIII. Regulatory Expertise in Data Analysis.

State (and federal) regulators increasingly rely upon a broad range of data to conduct market regulation activities. The ability to analyze a broad range of data for market regulation purposes requires a specific expertise which, given budget constraints that exist within many states, may be difficult to attract and retain qualified individuals who possess the appropriate data analysis expertise for market regulation and oversight purposes.

The Committee discussed these challenges in light of the fact that many state insurance departments do not have sufficient financial resources to address these issues. Moreover, though assistance to enhance the data analytical capabilities of the states could be provided by the NAIC, the NAIC does not have regulatory authority.

Nevertheless, regulatory authorities are exploring ways in which they can enhance their capacity to conduct data analysis on information provided by regulated entities such as life insurance companies. In this regard, Committee representatives acknowledged that an increasing percentage of staff at organizations like FINRA and the NAIC are comprised of individuals with a technology background.

Given the growing role of data analysis in compliance at life insurance companies, it is anticipated that regulatory authorities will continue to explore ways in which they can conduct appropriate data analysis as a key component of market regulation activities.

IX. 401(k) Rollover Transactions by Non-Securities Licensed Personnel.

The Committee discussed recent regulatory pronouncements to remind producers that, to the extent that a producer may be an insurance-only licensee, making a recommendation to "rollover" securities that currently reside within a 401(k) retirement plan in order to purchase a non-securities product may constitute a transaction for which the producer is not appropriately licensed.

The Committee's discussion confirmed that regulators continue to maintain concerns regarding the adequacy of disclosures and the costs associated with 401(k) rollover recommendations.

X. Senior Issues.

The Committee explored a range of issues associated with sales of financial products to seniors.

The Committee confirmed that the North American Securities Administrators Association ("NASAA"), FINRA and the SEC recently issued guidelines for organizations to comply with the provisions of the recently enacted Senior Safe Act.

The Committee also discussed that NASAA's Model Law to help detect and prevent financial abuse of elder adults has been adopted in 21 states. These laws/regulations allow broker-dealers or investment advisers to oppose an initial delay of disbursements from the accounts of an eligible adult for up to 15 days if financial exploitation of the senior is suspected.

Some states have adopted the Model Law in a manner that would require mandatory reporting of these concerns but other states (LA, MT, MO) have adopted versions of the Model Law that only encourage voluntary reporting.

The Committee also discussed senior sales-related initiatives undertaken at FINRA and the SEC. FINRA has received a very strong response to its Help Line to relay concerns regarding sales practices related to seniors. Moreover, FINRA examiners will be considering as an exam priority which firms are requesting the identification of a trusted third-party consistent with the requirements of FINRA Rule 4512.

The SEC's Office of Compliance Inspections and Examinations continues to identify senior sales issues as an area of focus during regulatory reviews.

XI. NAIC Lost Policy Locator Service.

The NAIC has made considerable progress with respect to its Lost Policy Locator Service designed to connect potential beneficiaries with possible benefits they may be eligible to receive under a life insurance policy.

Notwithstanding the NAIC's interest in establishing a centralized portal to provide this information, several states including New York, Illinois, Louisiana, Michigan, North Carolina, Ohio and Oregon maintain their own lost policy locator services.

The NAIC continues its efforts to refine the data and technological capabilities available through the Lost Policy Locator Service for the ease and use of life insurance companies and their consumers.

XII. Update on NAIC State Ahead Strategic Plan.

The NAIC has developed its "State Ahead" strategic plan for the organization. The State Ahead Plan is a three-year strategic plan which is approximately 1.5 years into its implementation.

The Plan focuses on, among other matters, enhancements to the NAIC's technological capabilities by moving information to the cloud and exploring the need for additional resources related to data analytics.

The Plan has identified 96 projects related to various initiatives and, at this time, 46 of these initiatives have reportedly been undertaken over the past 1.5 years.

These technological initiatives are being made available to enhance regulatory use of information. As an example, new technological enhancements by the NAIC may make analytical dashboards available for regulatory use on matters pertaining to the

Market Conduct Annual Statement, Complaint Data and the Regulatory Information Retrieval Service.

XIII. Update on NAIC Retirement Security Initiative.

The Committee heard an update concerning the NAIC's Retirement Security Initiative. Areas for future concern include consumer protection, product innovation and protection of seniors.

XIV. Fraud Awareness.

The Committee discussed potential frauds that may be identified in the marketplace for life insurance and annuity products as well as securities products.

Ms. Ireland provided comments concerning discussions that take place at CEFLI's Antifraud Issue Forum. Since undergoing a spate of "account takeover" activities over the past several months, many life insurance companies have instituted measures designed to detect these types of fraudulent practices more readily.

Other areas of fraud identified by the Committee included issues associated with groups of "Gypsies" or "Irish Travelers" that have a long-standing track record of perpetrating frauds upon the life insurance industry.

XV. Contemporary Compliance and Ethics Challenges.

Issues identified by the Committee as potential contemporary compliance and ethics challenges included: cybersecurity, information technology data breaches and crypto currencies.

XVI. Other Business.

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