

**DRAFT**

**Minutes  
Meeting  
of the  
2020 CEFLI Advisory Committee  
Thursday, January 23, 2020**

A meeting of the Advisory Committee (the "Committee") of The Compliance and Ethics Forum for Life Insurers ("CEFLI") was held on Thursday, January 23, 2020 at 10:00 AM EDT at The Residence Inn in Bethesda, Maryland.

The following individuals participated in the meeting in-person:

Larry Kosciulek (FINRA)

Suzanne McGovern (SEC)

Joseph Valenti (AARP)

The following individuals participated in the meeting via conference call:

Lois Alexander (NAIC)

Gary Sanders (NAIFA)

Also participating in the meeting were Donald J. Walters, President & CEO of CEFLI and Carla Strauch, 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 – October 10, 2019 Meeting.**

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the October 10, 2019 meeting of CEFLI's Advisory Committee are hereby approved.

**III. Secure Act.**

The Committee discussed the implications of the passage of the SECURE (Setting Every Community Up for Retirement Enhancement) Act, with respect to the elimination of “stretch IRAs.” The change means distributions may no longer be stretched over the life of beneficiary and instead must be distributed within a 10-year timeline. The Committee discussed the implications of the elimination of “Stretch IRAs” broadly, as related to the work of financial professionals.

Members of the Committee noted their engagement and support during the legislative processes and their appreciation of the Act's expansion and broadening of available of plans to employers. A few concerns were also noted.

First, concerns in the event there is a significant annuity marketing push, given individuals may already have pension plans with annuitization options. Second, concerns in the event an insurance company later develops financial difficulties. Third,

the fact that FINRA does not allow projections but may need to consider doing so, to align with the Act.

The role of longevity annuities was also discussed, along with the need to address three different retirement planning needs—longevity, immediate financial pressures (debt mgt., home repairs), and some type of payout between the two.

#### **IV. SEC Regulation Best Interest and Form CRS Relationship Summary.**

Following the SEC’s June 5, 2019 issuance of Regulation Best Interest and the Form CRS, firms have been developing compliance strategies aimed at complying with the new requirements. FINRA developed a Regulation Best Interest Webpage with a helpful “checklist” of issues for firms to consider and the SEC issued a series of Frequently Asked Questions regarding Regulation Best Interest and the Form CRS.

The Committee discussed compliance challenges and strategies related to Regulation Best Interest and the Form CRS Relationship Summary. CEFLI’s recent Summit Meeting on *The Future Sales Standards in the Life Insurance Industry* was noted, along with FINRA’s Regulation Best Interest training, which drew strong attendance as industry members sought implementation guidance and insight regarding how to demonstrate that appropriate systems are in place.

It was noted that some smaller firms are struggling with developing their compliance strategies. Other firms appear to be struggling with what to put on the CRS Relationship Summary Form and how to deliver the Form. While some larger firms (who readied themselves for the DOL Rule) may be further ahead, a few larger firms appear to have taken minimal action, to date.

There was some discussion regarding whether the SEC would allow a link to disciplinary actions information on the Form, while recognizing the Form will not always be delivered electronically and the fact some consumers may not have access to a computer.

The SEC indicated it may opt not to take enforcement action immediately following the effective date of the regulation if a firm has some holes in its compliance strategy but can demonstrate diligent and timely efforts to comply. Firms should leverage guidance provided in FINRA's Compliance Checklist and in the SEC's FAQs.

#### **V. FINRA and the SEC Examination Strategies – Regulation Best Interest.**

While Regulation Best Interest does not become effective until June 30, 2020, both FINRA and the SEC have indicated their exam activities prior to the effective date will include an assessment of a firm's degree of readiness for complying with the requirements of Regulation Best Interest.

The Committee discussed planned examinations strategies for assessing firms' readiness. It was suggested that firms should focus on the factors listed in FINRA's Examination Priorities Letter. Further, firms who are found to be unprepared can expect to have a follow-up visit. FINRA also noted its efforts to train examiners, with support from the SEC, regarding any interpretive matters.

#### **VI. SEC and NYDFS Investigations of 403(b) Plan Annuity Sales.**

As a result of the SEC's investigation of 403(b) plan annuity sales conducted through broker-dealers or registered investment advisers and the New York Department

of Financial Services' investigation regarding the manner in which 403(b) plan annuities are sold to educators, the Committee was asked to discuss current developments.

Now that the IRS allows annuities to be sold in 403(b) plans, the Committee discussed the importance of having complete and balanced presentations (including full disclosure of fees and expenses and a discussion regarding alternative products) when discussing annuities with enrollees. As educational institutions expand their product offerings in 403(b) plans, it is recognized some teachers don't understand they have a 403(b) plan or what it means. Additionally, California has an open architecture that allows anyone to go into a school and sell anything. Firms may wish to review of FINRA's December 12, 2019 press release regarding U.S. investors' confusion related to investment account fees.

#### **VII. Possible Rescission/Modification to Current FINRA Rules.**

During the Committee's prior meeting, the possible rescission or modification of current FINRA Rules, in light of the issuance of Regulation Best Interest, was discussed.

It was noted that FINRA continues to work through its comprehensive analysis regarding the implications of Regulation Best Interest and the identification of existing rules that may be impacted (e.g. cash/noncash compensation, sales contests, etc.).

For example, noncash compensation rules will need to comply with Regulation Best Interest since the regulation does not permit sales contests based on the sale of certain types of products (but does allow contests based on asset accumulation). Some existing FINRA rules may need to be modified, but not eliminated.

### **VIII. Regulation Best Interest Lawsuit.**

Seven states and the District of Columbia recently filed suit challenging the legality of the SEC's issuance of Regulation Best Interest. The lawsuit seeks to vacate the rule alleging the SEC exceeded its statutory authority when issuing the Regulation, alleging the Regulation does not meet standards required under the Dodd Frank Act, and citing the Regulation as capricious and arbitrary.

The Committee was offered the opportunity to discuss current developments regarding the lawsuit. No new developments were noted.

### **IX. FINRA and SEC 2020 Examination Priorities.**

Both FINRA and the SEC recently released their 2020 Examination Priorities Letters. FINRA's focus areas include examining firms' readiness for complying with Regulation Best Interest, communications to retail investors, and variable annuities. The SEC's focus areas include the importance of compliance programs, the Chief Compliance Officer, and the role of compliance professionals in a firm. The SEC noted its plan to evaluate a firm's compliance based on several factors including (1) whether compliance is "actively engaged" in a firm's operations; (2) whether the Chief Compliance Officer is knowledgeable and empowered with "full responsibility, authority and resources" to develop and enforce policies and procedures; and (3) whether the firm has a commitment from top executives who establish a "tone at the top that compliance is integral to the organization's success."

During the Committee's discussions, FINRA noted its recent reorganization has resulted in the consolidation of previous areas (e.g. sales practices, market regulation,

financial programs, etc.) into five (5) new areas: retail, capital markets, carrying and clearing, trading and execution, and diversified. FINRA's December 12, 2019 press release addressed the manner in which firms are assigned; a movement from 'regional' to 'type of firm' categorization (e.g. retail capital markets, trading and clearing, etc.). The SEC's program continues to be geographically regionally based.

In addition to reviewing FINRA's Examination Priorities Letter and its recently published disciplinary actions, firms may benefit from continued focus on variable annuities sales, Regulation Best Interest readiness efforts, private placements, social media (and related record-keeping), cash management and bank sweep accounts, cybersecurity, etc. Firms may also benefit from a continued focus on efforts related to fraud, sales conflicts, disclosures, policies and procedures, individuals targeting certain markets (e.g. retirement communities, teachers, military, etc.), sales of high risk products (e.g. complex products, those with high fees, selling affiliations), etc.

The discussion noted the fact that the SEC conducts regular examinations of FINRA to evaluate FINRA's operations and company examination program.

#### **X. NAIC Annuity Suitability (A) Working Group.**

The NAIC Executive and Plenary Committee will meet to consider approval of the updated Annuity Suitability Model Regulation on February 13th. The revised Model seeks to track key elements of SEC Regulation Best Interest.

Members of the Committee discussed their efforts to track the work of the NAIC Annuity Suitability (A) Working Group and they expressed their support of the adoption

of amendments to the Model. It was recognized that some guidance may be needed with regard to how to identify material conflicts of interest.

#### **XI. Fiduciary Legislation in the States - Massachusetts.**

Over the past few months, several states have introduced and enacted fiduciary legislation which would require financial advisers to abide by a fiduciary standard when working with customers.

Massachusetts Secretary of the Commonwealth, William Galvin, introduced a proposal in Massachusetts to establish a Fiduciary Conduct Standard and a

public hearing was held on January 7 for which several industry organizations submitted comments, including NAIFA, ACLI, SIFMA, FSI, and the joint trades. The NAIFA and ACLI CEOs also testified at the hearing.

Members of the Committee noted the proposed legislation could drive producers to a fee-based business model. The proposal is anticipated to move forward quickly. Aside from the proposal's inclusion of fixed and variable life insurance and annuities, the legislation appears similar to the New Jersey legislation which will need to be fully reintroduced if it does not gain traction in the next month. The proposal to implement the Nevada law appears to be on hold.

#### **XII. DOL Fiduciary Rule.**

Recent media reports suggest there has been coordination between the SEC and the US Department of Labor (“DOL”) as it relates to the SEC’s development of Regulation Best Interest and the same reports indicated that there was a likelihood that

the DOL would issue, prior to the end of 2019, a revised version of its DOL Fiduciary Rule vacated by the Fifth Circuit in March 2018.

Members of the Committee had no new updates.

### **XIII. Senior Issues.**

#### **A. Senior Safe Act - Training.**

The Senior Safe Act, signed into law on May 24, 2018, provides immunity from liability in any civil or administrative proceeding for reporting potential exploitation of a senior provided employees received training on the Act. Such employees include individuals who serve as supervisors in a compliance or legal function for a covered financial institution, registered representatives, investment adviser representatives, and insurance producers affiliated or associated with a covered financial institution.

The Committee discussed the collaborative efforts of the SEC, FINRA and NASAA to develop a joint, online training module. Progress tests will be imbedded within the content and firms will have the ability to add their own content to the module.

#### **B. Other Senior Initiatives.**

FINRA, the SEC and AARP have been actively involved in developing programs and information resources to assist senior investors. Specifically, FINRA and AARP have worked closely to develop initiatives designed to assist senior investors in making wise choices and avoiding potential frauds. FINRA and the SEC have developed “help lines,” published “risk alerts” and issued rules

[e.g., FINRA Rules 4512 (Customer Account Information) and 2165 (Financial Exploitation of Specified Adults)], to better inform senior investors of potentially fraudulent activities. Select state securities and insurance departments and others state regulatory authorities also have taken steps to encourage reporting of suspected instances of financial exploitation of seniors and vulnerable adults.

The Committee discussed additional efforts underway. Specifically, the issuance of FINRA's Regulatory Notice 19-27 which sought comments about senior investors issues and whether FINRA should update any of its existing rules related to senior needs. FINRA is currently reviewing the comments it has received.

#### **XIV. FINRA-NAIC Information Sharing – Licensing Registered Representatives and Insurance Producers.**

FINRA previously agreed to share registered representative disciplinary history information with the NAIC. This information has been forwarded to state insurance departments by the NAIC so state insurance departments may review their records to determine whether registered representatives against whom FINRA may have taken disciplinary action may also hold a state insurance producer's license.

Recent media reports indicated FINRA and the NAIC developed a memorandum of understanding on sharing licensing information for registered representatives and insurance producers. Accordingly, the Committee was asked to discuss any recent developments related to information sharing between FINRA and the NAIC.

During the Committee discussion it was noted that FINRA's registered representative disciplinary history is being shared with the NAIC and that the NAIC

subsequently forwards the information to the individual state insurance departments who can, but are not obligated to, take action.

## **XV. Update on NAIC Activities.**

### **A. NAIC Committee Chairs Announced.**

The NAIC recently announced of their Committee Chairs for 2020.

Committees related to life insurance regulation include:

NAIC Life Insurance and Annuities (A) Committee:

Chair: Jillian Froment, Director, Ohio Department of Insurance

Vice Chair: Pending

NAIC Market Regulation and Consumer Affairs (D) Committee:

Chair: Allen Kerr, Commissioner, Arkansas Insurance Department

Vice Chair: Barbara Richardson, Commissioner, Nevada Department of Business and Industry, Division of Insurance

### **B. NAIC Big Data (EX) Working Group.**

The NAIC has established the NAIC Big Data (EX) Working Group to, among other issues, review current regulatory frameworks used to oversee insurers' use of consumer and non-insurance data.

Recently, regulators have turned their attention to the life insurance industry to determine the nature and types of data that are used by life insurers as part of their underwriting process for life insurance policies.

Areas of regulatory focus have included the types of data being used, the ability of insurers to verify the accuracy of that data and the ability of consumers to challenge the accuracy of data that may have been used in a life insurance policy underwriting decision.

The Committee's discussion acknowledged the benefit of retaining the NAIC's charge and the value of additional transparency, with consumers, as it related to insurers' use of data and disclosure regarding how such data is used.

C. NAIC Accelerated Underwriting (A) Working Group.

Life insurers are exploring methods to accelerate the underwriting process to expedite the application process to obtain life insurance without having to undergo medical tests.

Given the increased prevalence of "accelerated underwriting" practices among insurers, the NAIC has established an Accelerated Underwriting Working Group to consider the use of external data and data analytics in accelerated life insurance underwriting.

D. NAIC Artificial Intelligence (EX) Working Group.

Insurers have been exploring the ways in which artificial intelligence can be applied to insurance company business practices to provide more efficient outcomes and expedite the insurance purchasing process for consumers.

Therefore, the NAIC has established its NAIC Artificial Intelligence (EX) Working Group to study the development of artificial intelligence and its use in the insurance sector.

#### **XVI. NAIC Lost Policy Locator Service.**

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.

The NAIC reportedly has been working collaboratively with the ACLI to develop enhancements to the Lost Policy Locator Service. The required data points have been reduced from 68 to 6. Additionally, modifications have been made to prevent consumers from continual submissions. There have been discussions between LICONY and the NYDFS to consider having NY participate. Both Louisiana and Ohio recently deferred to the NAIC program, leaving only five state-specific programs in effect.

#### **XVII. FINRA Consolidation of Broker Exam Functions into One Program.**

FINRA recently announced consolidation of several broker exam functions into one singular program. The effort is designed to streamline examinations of 3,600 broker-dealers and 630,000 registered representatives within its jurisdiction.

The consolidation will bring FINRA’s business conduct, financial reporting and training compliance exam programs under a single framework.

#### **XVIII. SEC Proposes Updates to Advertising Rules.**

The SEC recently proposed updates to its Advertising Rule that would allow registered investment advisers (RIAs) to use testimonials, endorsements and third-party ratings to solicit clients, subject to certain conditions. The proposal also includes requirements for presentation of performance results, based on the intended audience for the advertisement.

Members of the Committee speculated RIAs would favor a rule change since it would aid in competition. Currently, FINRA allows testimonials conditionally (if payment is disclosed and is within the ceiling allowed) and is continuing to review the comments it received.

#### **XIX. Fraud Awareness.**

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 was asked to share insight regarding any new types of fraud that have arisen over the past several months that may be of concern to life insurers. Members of the Committee were not aware of new fraud areas but noted continued use of existing scams such as fake IRS calls regarding an alleged Social Security number

compromise, the grandparent scheme, computer pop-up schemes alleging to fix a computer virus, efforts to impersonate investors during calls, etc.

During the discussion it was noted that the NAIC's Antifraud unit is seeing more money laundering concerns and concerns regarding the use of funds to defraud (with drug treatment centers).

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

The Committee was asked to comment on 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.

The discussion noted the need for a continued focus on SEC Regulation Best Interest and the need to help consumers understand what the regulation means to them.

**XXI. Other Business.**

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