

Agenda

**2019 CEFLI Advisory Committee
Meeting Thursday, October 10, 2019
10:00 AM - 3:00 PM, EDT
Charles Board Room
The Residence Inn
7335 Wisconsin Ave.
Bethesda, MD**

**Dial-in: 1 (877) 699-4804
Passcode: 240 744 3027 #**

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| I. | Welcome and Introduction. | Donald J. Walters |
| II. | Antitrust Statement. | Donald J. Walters |
| III. | Approval of Minutes – June 15, 2019 Meeting. | The Committee |
| IV. | SEC Regulation Best Interest and Form CRS Relationship Summary. | The Committee |

The SEC issued Regulation Best Interest and the Form CRS Relation Summary earlier this year.

Companies have had the opportunity to review Regulation Best Interest to determine its potential impact upon their current organizational practices. Regulation Best Interest represents one of the most significant changes to the standard by which financial service industry firms, including life insurance companies, will distribute their products over the years ahead.

Companies are also reviewing Form CRS to determine the types of disclosures to be provided to consumers to delineate the nature of the adviser/registered representative/producer's relationship to the consumer when offering advice to retail investors.

The Committee will be asked to discuss the types of compliance challenges that are raised by the introduction of Regulation Best Interest and Form CRS and strategies companies are pursuing to address these challenges.

V. Regulation Best Interest - Related Developments.

- A. CEFLI Summit Meeting - The Future of Sales Standards in the Life Insurance Industry - Fairmont Hotel - Washington, DC - November 20-21.

CEFLI will be conducting a Summit Meeting to explore The Future Sales Standards in the Life Insurance Industry at the Fairmont Hotel in Washington, DC on November 20-21.

Invitations have been extended to representatives of FINRA, the SEC, the NAIC Annuity Suitability (A) Working Group and the New York Department of Financial Services, among others, to engage in a discussion between company representatives and regulators concerning changing sales standards impacting the life insurance and annuity marketplace.

The Committee will discuss the upcoming CEFLI Summit Meeting concerning The Future of Sales Standards in the Life Insurance Industry.

- B. FINRA Regulation Best Interest Webpage.

FINRA has established a webpage devoted to providing guidance to allow firms to comply with the requirements of Regulation Best Interest.

The webpage can be found through the following address:

<https://www.finra.org/rules-guidance/key-topics/regulation-best-interest>

The webpage contains a helpful checklist firms can use to confirm their compliance with Regulation Best Interest and Form CRS. (See copy attached.)

The Committee will be asked to discuss FINRA's webpage devoted to Regulation Best Interest and also will be asked to discuss the checklist provided by FINRA to confirm compliance with Regulation Best Interest and Form CRS.

- C. Possible Rescission/Modification to Current FINRA Rules.

Regulation Best Interest may impact several current FINRA Rules; most notably, FINRA Rule 2111 (Suitability).

During our last meeting, the Committee discussed FINRA's efforts to review the implications of Regulation Best Interest to consider possible rescission/modification to current FINRA Rules.

The Committee will be asked to discuss, to the extent possible, current FINRA plans to review the implications of Regulation Best Interest upon current FINRA Rules.

D. FINRA Enforcement Role - Regulation Best Interest.

Some industry observers have suggested that Regulation Best Interest may not warrant any decision/modification of current FINRA Rules given that FINRA has regulatory authority to enforce compliance by broker-dealers with SEC Rules.

Questions have been presented concerning whether FINRA will conduct examination activities to confirm compliance with Regulation Best Interest and, if so, when these examination activities may take place.

The Committee will be asked to discuss whether FINRA will enforce compliance with Regulation Best Interest as part of its broker-dealer exam process.

E. Regulation Best Interest Lawsuit.

Seven states and the District of Columbia have filed suit against the SEC challenging the legality of the issuance of Regulation Best Interest.

The lawsuit seeks to vacate Regulation Best Interest for three reasons:

- The SEC exceeded statutory authority to issue Regulation Best Interest;
- Regulation Best Interest does not apply the same standard as required for investment advisers as required under the Dodd Frank Act; and
- The rulemaking was arbitrary and capricious.

The Committee will be asked to discuss the potential implications of the Regulation Best Interest lawsuit.

F. Fiduciary Legislation in the States.

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

Some consumer and industry observers have argued that Regulation Best Interest is not sufficiently stringent to protect consumer interests and,

therefore, have been proponents of introducing fiduciary legislation in several states.

The enactment of various forms of fiduciary legislation in the states that conflict with Regulation Best Interest and other securities-based fiduciary standards may add increased complexity into developing appropriate compliance strategies to address evolving sales standards.

The Committee will be asked to discuss efforts to introduce fiduciary legislation in the states in light of the issuance of Regulation Best Interest.

VI. NAIC Annuity Suitability (A) Working Group. The Committee

The NAIC Annuity Suitability (A) Working Group continues its work to explore revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

The Working Group is conducting a series of conference calls over the next several weeks in preparation for developing a final draft of revisions to the Model Regulation to be introduced to the NAIC for possible approval at the 2019 National Meeting in Austin, Texas on December 6-10.

Efforts have been undertaken to try to promote “harmonization” between any possible revisions to the Model Regulation and Regulation Best Interest.

The Committee will be asked to discuss developments undertaken by the NAIC Annuity Suitability (A) Working Group to consider revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

VII. Senior Issues. The Committee

A. Senior Safe Act.

The Senior Safe Act was signed into law on May 24, 2018. The Senior Safe Act provides immunity from liability in any civil or administrative proceeding for reporting potential exploitation of a senior.

In order to be eligible to attain the immunity provided by the Act, training must be provided to employees who are eligible for immunity which would include an employee who serves as a supervisor in a compliance or legal function for a covered financial institution or a registered representative, investment adviser representative or insurance producer affiliated or associated with a covered financial institution.

The Committee will be asked to discuss the extent to which organizations have conducted training to allow applicable employees to be eligible to attain the immunity provided by the Senior Safe Act.

B. Issues with Validity of Powers of Attorney and Trustee Documents.

In attempting to resolve issues associated with the exploitation of seniors and vulnerable adults, companies are encountering challenges associated with verifying the validity of powers of attorney and trustee documents that may authorize third parties to act on behalf of a senior or vulnerable adult.

Unfortunately, often these circumstances implicate efforts by family members to utilize these legal documents (or fraudulent versions) to attempt to attain authorization to conduct financial transactions on behalf of a senior or vulnerable adult.

The Committee will be asked to discuss their observations and experiences with regard to their efforts to verify the validity of powers of attorney and trustee documents that may be associated with financial transactions on behalf of our seniors and vulnerable adults.

C. Senior-Related Regulatory Initiatives.

Regulatory authorities have expressed concerns regarding the aging demographics of our population and the implications of these trends for purposes of financial exploitation of seniors.

FINRA and the SEC have taken steps to provide resources for senior investors such as establishing “help lines,” publishing “risk alerts” and issuing rules (e.g., FINRA Rules 4512 (Customer Account Information) and 2165 (Financial Exploitation of Specified Adults), to better inform senior investors of potential 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 will be asked to discuss the role of the SEC, FINRA and the NAIC in attempting to assist organizations to detect and deter potential instances of financial exploitation of seniors and vulnerable adults.

D. International Trends and Their Potential Effect upon Domestic Regulatory Activities.

Over the past several years, US federal securities regulators have encouraged firms to identify a “trusted third-party” as part of the account opening process in the event a firm may need to contact an individual when suspected instances of financial abuse may arise.

These types of “third-party support persons” have been utilized effectively throughout Canada and the European Union to address these types of issues.

Given the prevalence of these types of initiatives internationally, it remains to be seen whether increased reliance upon a “trusted third-party” may become more prevalent within state insurance, state securities and other state-based regulations in the future.

The Committee will be asked to discuss international trends related to the identification of “third-party support persons” and their potential impact upon domestic regulatory activities designed to protect the interests of senior investors and vulnerable adults.

VIII. DOL Fiduciary Rule.

The Committee

A review of the US Department of Labor (“DOL”) regulatory calendar suggests that the DOL is planning to issue a revised version of its former DOL Fiduciary Rule prior to the end of 2019.

Media reports suggest there has been coordination between the SEC and the DOL as it relates to the SEC’s development of Regulation Best Interest. These reports signal intent on the part of the DOL to harmonize key elements of Regulation Best Interest in the DOL’s development of a revised Fiduciary Rule.

The Committee will be asked to discuss the extent to which they may be aware of coordination between the SEC and the DOL with respect to the DOL’s development of a revised Fiduciary Rule.

IX. Update on NAIC Activities.

The Committee

A. 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.

Previously, regulatory concerns regarding the use of data by insurers was focused upon property and casualty insurers' use of data to make underwriting decisions for property and casualty insurance purposes.

More 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 will be asked to discuss the recent activities of the NAIC Big Data (EX) Working Group.

B. NAIC Accelerated Underwriting (A) Working Group.

Life insurers are continuing to explore ways to enhance the customer experience. In some cases, these initiatives include developing ways to accelerate the underwriting process so a consumer can receive a final decision on their application without, in some cases, having to undergo medical tests.

As a result of the prevalence of this practice of "accelerated underwriting," the NAIC has established in accelerated underwriting Working Group to consider the use of external data and data analytics in accelerated life insurance underwriting.

The Committee will be asked to discuss the recent activities of the NAIC Accelerated Underwriting (A) Working Group.

C. 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.

However, artificial intelligence and data analytics initiatives pose unique challenges for regulatory authorities to ensure that these methodologies are not used in a way that would unfairly discriminate against insurance 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.

The Committee will be asked to discuss the recent activities of the NAIC Artificial Intelligence (EX) Working Group.

X. 2019 FINRA Industry Snapshot. The Committee

FINRA annually conducts an analysis of its data related to the status of the securities industry in the United States. This information is published in the form of a “Snapshot” which FINRA released recently. (See copy attached.)

The Snapshot provides a high-level overview of the industry, ranging from the number of FINRA-registered individuals to the overall revenues of firms and others selected indicia.

The Committee will be asked to discuss the 2019 FINRA Industry Snapshot report.

XI. 2020 Examination Priorities. The Committee

Every year, FINRA and the SEC publish lists of their areas for Examination Priorities in the coming year.

The examination experiences of the current calendar year are often used to inform the identification of examination priorities in the coming year.

The Committee will be asked to discuss, to the extent they are able to do so, anticipated 2020 Examination Priorities by securities regulators.

XII. Data Analytics in Compliance and Market Regulation. The Committee

Companies are becoming more sophisticated in their use of data analytics in their Compliance Departments as a means to identify potential future risks and to develop appropriate mitigation strategies.

As the NAIC moved toward a market analysis approach to regulation, regulators became more active and savvy with respect to the number and volume of data requests to insurers and regulators’ ability to analyze this data for market regulation purposes.

However, as companies become more sophisticated in their use of data to drive business outcomes, regulators may be challenged to secure appropriate resources and attract appropriate staff skill sets to be able to analyze data more efficiently and to provide appropriate oversight of insurer use of data in the future.

The Committee will be asked to discuss the extent to which data analytics is playing an increased role in compliance practices at insurers and the

steps regulators may take to bolster their human and technical resources to analyze data for market regulation purposes.

XIII. 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.

Life insurance companies have reported improvement in the ease-of-use associated with accessing information within the NAIC Lost Policy Locator Service.

However, frustrations among life insurers still exist to the extent 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 receive an update report on the NAIC Lost Policy Locator Service and will explore life insurers' use of the service.

XIV. 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.

XV. Contemporary Compliance and Ethics Challenges. The Committee

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.

XVI. Other Business.