

Agenda

CEFLI Compliance & Ethics Committee Meeting
Wednesday, December 16, 2020
2 PM EST/1 PM CST/12 Noon MST/11 AM PST
Dial In: (800) 239-9838
Passcode: 5690858

- I. Welcome and Introduction. Donald J. Walters**
 - A. Antitrust Statement.
- II. Approval of Minutes – November 12, 2020 Meeting. The Committee**
- III. Issues for Review. The Committee**
 - A. Coronavirus (COVID-19).

Our agendas for future Committee meetings over the next several months will include a standing agenda item to offer an opportunity to raise any issues associated with regulatory requirements/guidance, operational practices, work from home challenges and return to work strategies as the COVID-19 pandemic continues.

The Committee will be asked to discuss any compliance-related issues associated with regulatory requirements/guidance, operational practices, work from home challenges and return to work strategies associated with the COVID-19 pandemic.

- B. Anti-Money Laundering (AML) Act of 2020.

Congress recently passed the Anti-Money Laundering Act of 2020 as an amendment to the passage of the National Defense Authorization Act for Fiscal Year 2021. Some industry observers have identified the passage of the Act as a “comprehensive overhaul of US into money-laundering laws.” The legislation awaits President Trump’s signature.

Among its provisions, the AML Act of 2020 incorporates new requirements including the reporting of beneficial ownership information; new penalties for those convicted of serious Bank Secrecy Act violations and creation of a whistleblower reward program through the Department of Treasury where whistleblowers could be eligible to receive an award of up to 30% of collected monetary sanctions exceeding \$1 million.

A question has been presented concerning the applicability of the Act to AML compliance for life insurance companies concerning covered products.

The Committee will be asked to discuss their interpretation of the applicability of the AML Act of 2020 on AML compliance practices for life insurance companies concerning covered products.

C. Determining Corporate “Risk Appetite” in Combined Compliance Departments.

As companies examine their practices to address compliance and risk-related issues, some companies have elected to combine their compliance, risk management and/or audit departments.

When these types of combinations arise, questions may be presented concerning who may have responsibility for identifying the “risk appetite” of the company with respect to various company operations.

As an example, in companies with separate compliance departments, compliance may be charged with responsibility to determine the “risk appetite” related solely to compliance matters. However, in combined compliance, risk and/or audit departments, a question may be presented concerning: *Who determines the “risk appetite” for a broad array of company functions in a combined compliance, risk and/or audit environment?*

In some companies, the owner of a particular business function may determine the acceptable degree of risk within their business. In other companies, the company’s Board of Directors may approve an overall “risk appetite” statement for the company. And, in other companies, a broad range of constituents from various company functions may provide input into a company’s “risk appetite” through consultation with overall enterprise risk management practices.

The Committee will be asked to discuss the manner in which their companies determine their “risk appetite” (as it may relate to specific company operations or an overall corporate strategy) and how this analysis may take place in a combined compliance, risk and/or audit department corporate structure.

D. “Digital Transformation.”

In an effort to reduce waste associated with their operations, many life insurance companies are pursuing what has been referred to as a “Digital Transformation.” The core principles of a “Digital Transformation” effort include: (1) eliminating the

use of paper to communicate with customers, unless required by law; and (2) exploring ways to reduce customer interactions involving staff (via web/phone).

A question has been presented concerning whether any members of the Committee may have experience pursuing “Digital Transformation” initiatives and, if so, whether they may have recommendations to offer concerning how to approach the state-by-state analysis and work effort required.

The Committee will be asked to discuss whether their companies have undertaken a “Digital Transformation” initiative and, if so, whether they may have any comments/recommendations concerning their experience.

E. Electronic Customer Communications - Billing and Grace Period Notices.

Life insurance companies provide a wide range of communications to their customers. Common types of life insurance company communications to customers include sending billing and grace period notices to customers, as applicable.

As companies pursue initiatives to provide communications to their customers electronically, a question has been presented concerning whether companies have opted to provide billing and grace notices through electronic communications only. Also, a related question asks whether there are any state restrictions against providing billing and grace notices through electronic communications only.

The Committee will be asked to discuss their practices, if any, with respect to sending billing and grace period notices to customers electronically and whether such practices may be prohibited in certain states.

F. New York Department of Financial Services - Regulation 187 Exams.

In July 2018, the New York Department of Financial Services (NYDFS) amended Regulation 187 to incorporate a best interest standard applicable to both life insurance and annuity products.

Life insurance companies had to comply with the requirements of Regulation 187 related to annuities on August 1, 2019 and the requirements of Regulation 187 related to life insurance policies on February 1, 2020.

At the time that Regulation 187 was amended in July 2018, several interpretive questions of key provisions of Regulation 187 were left outstanding.

The NYDFS issued a list of Frequently Asked Questions in September 2019 as a means to address several of these outstanding issues. However, it also was

anticipated that examinations of life insurers by the NYDFS would help to clarify regulatory expectations with respect to an appropriate demonstration of compliance with the requirements of Regulation 187 by life insurance companies.

With this in mind, a question has been presented concerning the extent to which the NYDFS has begun to conduct examinations of life insurance companies to determine compliance with the requirements of Regulation 187 and, if so, whether these examination activities give further insight into regulatory expectations regarding Regulation 187 compliance.

The Committee will be asked to discuss whether their companies have been subject to examination by the NYDFS to determine compliance with the requirements of Regulation 187 and whether these examination activities have offered further insight into the regulatory expectations of the NYDFS regarding Regulation 187 compliance.

G. Operational Practices Associated with Dissemination of Regulatory Notices - Natural Disasters and Health Pandemics.

In the event of natural disasters and health pandemics such as COVID-19, regulatory authorities may issue Bulletins or other types of guidance to establish regulatory expectations with respect to insurer practices to comply with regulatory requirements associated with these unusual events.

A question has been presented concerning the manner in which life insurance company compliance departments may disseminate these types of regulatory notices so life insurance company employees may be aware of these requirements.

For purposes of our discussion, Committee members will be asked to consider the following questions:

- *What are the operational practices companies may undertake to disseminate regulatory notices?*
- *Do companies send out an internal notice to all employees or do they establish a chart to outline the requirements of various states?*
- *Are systems updated to identify the application of these regulatory requirements on customer specific records so customer service employees would be aware of applicable requirements when accessing the customer's account information in their company systems?*

The Committee will be asked to discuss their operational practices with respect to disseminating regulatory notices related to natural disasters and

health pandemics so that all employees may be aware of these requirements in order to comply with them appropriately.

H. Training Resources - Best Interest Standard - Revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

The recent revisions to the NAIC Suitability in Annuity Transactions Model Regulation require producers to complete a general annuity training course in order to comply with the requirements of the Model Regulation.

(The NAIC Annuity Suitability (A) Working Group is reviewing the application of these annuity training requirements as part of their review of draft Frequently Asked Questions (FAQs) associated with the Model Regulation. The NAIC's September 4, 2020 FAQ draft is [included here](#). The NAIC's summary of specific industry questions related to the training requirements is [included here](#).)

A question has been presented concerning the types of resources life insurers are using to train producers on the Best Interest Standard associated with the revisions to the Model Regulation.

The Committee will be asked to discuss of the types of training resources that may be available to provide producer training on the Best Interest Standard associated with the recent revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

IV. Reporting Items.

CEFLI Staff.

A. Adoptions of the Revised NAIC Suitability in Annuity Transactions Model Regulation.

CEFLI continues to monitor developments related to possible adoptions of the revised NAIC Suitability in Annuity Transactions Model Regulation in various states.

Thus far, Iowa, Arizona and Rhode Island have adopted their state-specific versions of the revised Model Regulation.

Since the Committee's last meeting, Delaware has proposed an amended regulation to incorporate the requirements of the revised NAIC Suitability in Annuity Transactions Model Regulation. (The proposed regulation can be found [here](#).) The target effective date of Delaware's proposed regulation would be August 1, 2021.

Moreover, Alabama held a hearing on December 8 concerning its proposed version of the revised Model Regulation. (The proposed regulation can be found

[here](#).) If finalized without delay, Alabama’s version of the Model Regulation would become effective January 1, 2021.

It is anticipated that other states will be introducing similar legislation/regulations over the next several months.

The Committee will be asked to discuss any updated developments with respect to plans by states to introduce legislation/regulations to adopt the revised NAIC Suitability in Annuity Transactions Model Regulation.

B. Amendments to the NAIC Unfair Trade Practices Model Act.

The Executive Committee of the NAIC recently adopted amendments to the NAIC’s Unfair Trade Practices Model Act which would permit certain types of “rebates” to be offered to consumers. (See copy attached.)

The amended language would permit insurers or producers to “offer or give non-cash gifts, items, or services, including meals to or charitable donations on behalf of the customer, in connection with the marketing, sale, purchase or retention of contracts of insurance.”

The NAIC’s Innovation and Technology Task Force has explored revising the Unfair Trade Practices Model Act to promote innovations and technology such as the use of “wearables” by life insurance companies without considering these practices to constitute an unlawful “rebate.”

C. DOL Fiduciary Rule Under Review at the Office of Management and Budget (OMB).

The new DOL Fiduciary Rule has been submitted for review to the Office of Management and Budget (OMB).

It remains to be seen whether OMB will approve the new Rule expeditiously and/or whether the incoming Biden Administration may want to revise or rescind the rule.

D. NAIC 2021 Officers.

The NAIC recently announced the election of officers for 2021.

- President - David Altmeier - Florida;
- President-Elect - Dean Cameron - Idaho.
- Vice President - Chlora Lindley-Myers - Missouri; and
- Secretary-Treasurer - Andrew Mais – Connecticut.

Leadership of key NAIC Committees will be determined through the NAIC's Commissioners' Roundtable which generally takes place in January of each year.

V. CEFLI Activities.

- A. Joint Webinar - CEFLI Affiliate Member Locke Lord - The Future of Market Regulation - Post COVID-19 Environment - Wednesday, November 18.

CEFLI recently conducted a Joint Webinar with CEFLI Affiliate Member Locke Lord to explore The Future of Market Regulation in a Post COVID-19 Environment. Michael Rohan, former Deputy Director of Market Regulation for the Illinois Department of Insurance and now Of Counsel in the Insurance Regulatory and Transactional Group at Locke Lord served as faculty for the webinar.

A copy of the presentation deck and webinar recording can be found [on this page](#).

- B. Joint Webinar - CEFLI Affiliate Member BrownWinick - Year in Review - Thursday, December 10.

CEFLI recently conducted a Joint Webinar with CEFLI Affiliate Member BrownWinick to examine the Year in Review for life insurance industry compliance and ethics professionals.

Maureen Henderson, Counsel with BrownWinick, moderated the session. She was joined by Megan Claypool, Chief Compliance Officer with Athene and Kelly Stokes, Chief Compliance Officer with Principal. The webinar explored the challenges faced by the industry in 2020 and it identified the challenges that may lie ahead in 2021. A copy of the presentation deck and webinar recording can be found [on this page](#).

- C. Webinar - Unclaimed Property – Wednesday, January 20, 2021 1 PM EST.

CEFLI will conduct a webinar on Unclaimed Property issues on Wednesday, January 20, 2021.

Our faculty member for the session will be Cornel Lupo with Unclaimed Property specialists Sovos (formerly Keane).

Please plan to join us for this informative session!

D. Advertising Review Networking Forum.

CEFLI's Advertising Review Networking Forum met on Tuesday, December 15th. The Forum meets bimonthly to discuss current compliance challenges related to advertising review. Individuals interested in joining the forum may contact NancyPerez@CEFLI.org

E. Compliance Fundamentals Training Conference (CFTC).

CEFLI conduct its Compliance Fundamentals Training Conference virtually on November 19th and 20th. The CFTC features sessions on:

- Overview of Life Insurance Companies, Distribution Systems and Regulatory Authorities
- Overview of Life Insurance Company Products
- Complaint Handling
- Replacements
- Advertising Review
- The Role of Compliance at a Life Insurance Company
- Legislative and Regulatory Monitoring
- The State Insurance Regulatory Examination Process and its Impact Upon Compliance
- Suitability/Best Interest/Fiduciary Standards – Evolving State and Federal Sales Standards
- Working with Business Partners – Sales/Marketing and Producers

Presentation materials for the sessions can be [found here](#).

VI. Next Meeting.

The next meeting of the Committee is scheduled to take place:

Wednesday, January 13, 2021 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Other 2021 Committee meetings are scheduled to take place as follows:

Wednesday, February 10, 2021 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Wednesday, March 10, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, April 14, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, May 12, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, June 9, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, July 21, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, August 11, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, September 15, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, October 13, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, November 10, 2021 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, December 8, 2021 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Please mark your calendar and plan to join us!

VII. Other Business.

The Committee will be asked to identify and discuss any other business to be brought before the Committee.

DRAFT

**Minutes
Meeting of the
CEFLI Compliance & Ethics Committee
November 12, 2020**

A meeting of the CEFLI Compliance & Ethics Committee (the “Committee”) was held via conference call on Thursday, November 12, at 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT.

The following CEFLI member company representatives participated in the meeting:

Norm Von Seggern, AAA Life Insurance Company
Keith Schroeder, American-Amicable Life Insurance Company
Dave Milligan, American Equity
Bill Turner, American Fidelity Assurance Company
Dwain Akins, American National Insurance Company
Jason Broussard, American National Insurance Company
Stacey White, American National Insurance Company
Rebecca Criswell, Americo Financial Life and Annuity Insurance Company
Christy Stephens, Americo Financial Life and Annuity Insurance Company
Laurie Lewis, Amica Life Insurance Company
Jill Fiddler, Assurity Life Insurance Company
John Sharp, Assurity Life Insurance Company
Mechile Adams, Athene USA
Paula Gentry, The Cincinnati Life Insurance Company
Larry Welch, Citizens, Inc.
Shannon Aussieker, Country Life Companies
Jacquie Crader, CUNA Mutual Group
De Keimach, Delaware Life Insurance Company
Diane Chunglo, Delaware Life Insurance Company
Chris Vellante, Delaware Life Insurance Company
Matthew Chisholm, Erie Insurance Group
Jenna Austin, Guggenheim Life and Annuity Company
Heather Russo, Illinois Mutual Life Insurance Company
Emily Wilburn, Illinois Mutual Life Insurance Company
Scott Schabel, Jackson National Life Insurance Company
Bart Vitou, Jackson National Life Insurance Company
Amy Capocci, John Hancock
Stephen Harris, Lincoln Financial Group
Sally Roudebush, Lincoln Heritage Life Insurance Company
Donna Brown, Lombard International

Valarie Murray, Lombard International
Michelle Ross, Lombard International
Alison Soderberg, Lombard International
Ellen Reynolds, Modern Woodmen of America
Jennifer Knabe, The Ohio National Life Insurance Company
Michael Schwallie, The Ohio National Life Insurance Company
Lauren Barbaruolo, Oxford Life Insurance Company
Megan Gonzales, Oxford Life Insurance Company
Martin Karp, Oxford Life Insurance Company
Lisa Hankins, Pacific Guardian Life Insurance Company, Ltd
Robert Martinez, Pacific Life Insurance Company
Rania Sarkis, Pacific Life Insurance Company
Belinda Howard, Principal
Mike Currier, Protective Life Insurance Company
Ryan Schwoebel, Protective Life Insurance Company
Stephen Smith, Protective Life Insurance Company
Kevin Sullivan, Protective Life Insurance Company
Tracy Gardner, RiverSource Life Insurance Company
Mark Lasswell, RiverSource Life Insurance Company
Ryan Meehan, RiverSource Life Insurance Company
Calvin Kwan, Sagicor Life Insurance Company
Sara Dekker, Sammons Financial
Dan Leblanc, The Savings Bank Mutual Life Insurance Company of Massachusetts
Meagan Bellin, Securian Financial
Amy Burggraff, Securian Financial
Deb Cooper, Securian Financial
Amanda Kelting, Securian Financial
Kathy Mangum, Southern Farm Bureau
Leslie Smith, Southern Farm Bureau
Charles Rho, Symetra Life Insurance Company
Sandy Ray, Symetra Life Insurance Company
Steve Corbly, The Cincinnati Life Insurance Company
Liza Perry, USAA Life Insurance Company
Michelle Holmes, Voya Life Insurance Company
Kate Blalock, Western & Southern Financial Group
Cathy Schweitzer, Western & Southern Financial Group
Molly Swami, Western & Southern Financial Group
Carol Wanstrath, Western & Southern Financial Group

Donald J. Walters, President & CEO, Carla Strauch, Vice President - Compliance & Ethics, and Mallory Hart, Director of Member Relations, Communications and Meetings, also attended the meeting.

I. Welcome and Introduction.

The meeting began with a recitation of CEFLI’s anti-trust statement.

II. Approval of Minutes – October 14, 2020.

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the October 14, 2020 meeting are hereby approved.

III. Issues for Review.

The Committee

A. Coronavirus (COVID-19).

CEFLI’s COVID-19 Networking Forum meets monthly. The next meeting is scheduled to take place later today, Thursday, November 12 at 3 PM EDT/2 PM CDT/1 PM MDT/12 Noon PDT. Please contact Nancy Perez (NancyPerez@cefli.org) if you or your colleagues would like to be added to the COVID-19 Networking Forum.

Committee members were reminded of the availability of complimentary COVID-19 resources on CEFLI’s [Additional Resources](#) webpage, under the “COVID-19 Resources” subheading.

Committee members were asked to share their return-to-office plans with the Committee. During the discussion, it was noted that some companies previously had waves of staff return to the office, only to later ask some staff to return to a remote work environment due to an increase in the incidence of COVID-19 (in the local community).

Other Committee members indicated they had “paused” their return-to-office plans or indicated they planned to reevaluate next steps in January, or in the following months. One Committee member indicated the company’s staff utilizes rotating schedules to support social distancing protocols.

B. OFAC Checks.

The Office of Financial Assets Control (OFAC) requires financial institutions to conduct “checks” against OFAC’s lists of Specially Designated Nationals (SDN) and other blocked persons.

The Committee was asked to discuss company practices with respect to conducting “checks” of OFAC’s SDN and other blocked persons, including when such checks are conducted and who (i.e. insured/annuitant, owner, beneficiary,

etc.) is subject to an OFAC check. Committee members were also asked to provide insight regarding any external vendors that may be utilized to support such processes.

One Committee member indicated such checks are often conducted multiple times based on the type of transaction that has or will occur. Such checks may be conducted when new business is received (prior to issuance), when an address change is received, when a name change is received, and when funds are paid (e.g. surrenders, withdrawals, commission payments, etc.). Additionally, Committee members commented on automated processes that occur on a weekly, monthly, quarterly, or annual basis, depending on the type of transaction. One Committee member shared that screening of the company's database is conducted every day. Another Committee member shared that beneficiaries' names are reviewed against the OFAC SDN list before proceeds are paid.

Committee members were asked to share the names of vendors utilized to conduct such checks. The following vendor names were shared: CaseWare, FIS Prime Compliance Suite (for case documentation/tracking), LexisNexis, Bridger Insight, SpinScan, and PayFlag (for disbursements). Some Committee members also referenced the use of internally developed systems and tools. Such controls often rely on the use of fuzzy logic.

C. Politically Exposed Persons.

The Office of the Comptroller of the Currency (OCC) recently issued Bulletin 2020-77 (the "Bulletin") a multiagency Joint Statement on Bank Secrecy Act due diligence requirements for customers who may be considered Politically Exposed Persons (PEPs).

The Bulletin notes that, although Bank Secrecy Act and anti-money-laundering regulations do not define PEPs, PEPs are commonly identified as:

"... foreign individuals who are or have been entrusted with a prominent public function, as well as their immediate family members and close associates. By virtue of this public position or relationship, these individuals may present a higher risk that their funds may be the proceeds of corruption or other illicit activity."

Committee members were asked to discuss their company's practices, if any, with respect to identifying Politically Exposed Persons (who may present a higher risk that their funds may be the proceeds of corruption or other illicit activity) as part of their company's operations.

One Committee member shared insight regarding their company's effort to implement new controls in this area. The Committee member noted that a high volume of potential hits were received when the initial checks were conducted, due to the use of fuzzy logic. The company prioritizes its review of potential matches based on whether the match involves a domestic or foreign potential match.

D. Virtual Meetings - Producer and Customer - COVID-19 Environment.

The nature of sales activities for many companies have changed in the COVID-19 environment. Increasingly, producers are meeting with prospective customers and current customers virtually (rather than in-person).

Committee members were asked to discuss their practices to confirm that virtual meetings between producers and customers took place in a virtual COVID-19 environment. Members were asked to share how they verify that a virtual meeting took place between a producer and a customer and, to the extent verification procedures are in place, whether they are applied in all cases or selectively.

One Committee member commented on the fact that, while such checks are a challenge, the same risk exists with in-person meetings.

Another Committee member shared that his company provided guidance early regarding the appropriate steps to take when conducting virtual client meetings with its producers. The communication reminded producers of the need to document how the meeting occurred, when the meeting occurred, and stressed the importance of ensuring forms and documents are sent securely. The guidance was well received by producers. Another Committee member confirmed they had provided a similar proactive communication to their producers and it, too, was well received.

E. Date of Birth (DOB) Changes.

From time to time, life insurance companies receive requests from policy/contract holders to change a date of birth (DOB). In some cases, a DOB change may result in a change in age.

Committee members were asked to discuss their company's practices with respect to the handling of date of birth changes. Specifically, Committee members were asked to discuss whether they ask for remittance from the client (or a refund, if applicable) at the time the error is discovered, and whether they adjust claims at the time of the death claim.

One Committee member noted that action is taken at the time the discrepancy is discovered, consistent with the contract provisions of the impacted contract.

Another Committee member indicated the company shares such information with Compliance when there is a misrepresentation on an application, due to potential fraud and due to the need to “know-your-customer.”

F. Adoptions of the Revised NAIC Suitability in Annuity Transactions Model Regulation.

CEFLI continues to monitor developments related to possible adoptions of the revised NAIC Suitability in Annuity Transactions Model Regulation in various states. The Committee previously identified activity to adopt the revised version of the Model Regulation in the following states: Arkansas, Alabama, Idaho, Kentucky, Michigan, Nevada, Ohio, Maryland, and Wisconsin. Additionally, Arizona and Iowa adopted the revised version of the NAIC Suitability in Annuity Transactions Model Regulation with a January 1, 2021 effective date and Rhode Island has adopted the Model Regulation with an April 1, 2021 effective date.

Committee members were asked to share any new developments in this area.

Committee members indicated that both Texas (legislation) and Maine (regulation, effective 07/01/21) currently have proposals exposed for comment.

IV. Reporting Items.

CEFLI Staff.

A. Massachusetts Sales Contest Sweep.

In a letter dated October 14, the Massachusetts Securities Division requested information from several broker-dealers as part of a “sweep” of broker-dealers sales contests, bonuses, and other incentive programs.

The inquiry required the submission of information to identify all contests, sales incentives, incentive programs, bonus programs or other cash or non-cash rewards, prizes, incentives, bonuses or compensation between January 1, 2019 and August 31, 2020. This time period is designed to capture information regarding practices before and after the September 1, 2020 enforcement date of the Massachusetts fiduciary rule.

The letter required a complete response by October 28, 2020.

CEFLI will continue to monitor any regulatory actions that may arise considering the information collected as part of the “sweep” of sales contests and other incentive programs by the Massachusetts Securities Division.

One Committee member indicated his firm was included in the Massachusetts Sales Contest Sweep. He indicated an extension of time was needed to respond to all of the information requested.

B. SEC Regulation Best Interest and Form CRS Roundtable - October 26.

The SEC recently conducted a Roundtable to review initial findings as a result of examination activities designed to determine firm compliance with Regulation Best Interest and Form CRS. The Roundtable included representatives from FINRA and SEC staff in their discussions.

CEFLI staff provided a brief report concerning the highlights of the SEC Roundtable. A summary of the Roundtable was provided with the agenda materials and [is linked here](#) on CEFLI.org.

A few highlights from the summary include:

- The scope of SEC Regulation Best Interest includes account recommendations, in addition to product recommendations.
- The SEC indicated that several firms did not identify and include appropriate disciplinary history on their Form CRS.
- In some cases, policies and procedures reviewed by the SEC and FINRA merely restated the standard and failed to explain how to comply with the standard.
- The layering of Regulation Best Interest standards on top of suitability standards is not sufficient due to the differing requirements associated with the respective standards.
- The SEC is heavily focused on the need for an analysis of cost but has noted that the lowest cost product may not be the best solution.
- Company solutions and controls must be tailored to the company's unique business model.
- SEC Regulation Best Interest did change analysis needs associated with recommendation.

C. SEC Plans to Hire More Examiners Next Year to Monitor Compliance with Regulation Best Interest and Form CRS.

In recent public remarks, SEC Chairman Jay Clayton indicated that the SEC plans to hire more examiners next year to monitor compliance with Regulation Best Interest and Form CRS.

The growing number of investment advisor and broker-dealer firms subject to regulation by the SEC continues to grow in a manner that outpaces the resources of SEC's Office of Compliance Inspections and Examinations staff.

D. SEC Risk Alert - Assessment of Compliance and Supervisory Practices at Investment Advisor Geographically Dispersed Branch Offices.

The SEC's Office of Compliance Inspections and Examinations recently issued a Risk Alert as part of its Multi-Branch Initiative review to assess compliance and supervisory practices at branch offices of investment advisers.

The Risk Alert identified several concerns including lack of implementation of policies and procedures taking place within geographically dispersed branch offices and lack of appropriate supervision and oversight from home office locations.

E. FINRA Regulatory Notice 20-38 - Limitations on Registered persons Becoming a Beneficiary, Executive or Trustee of a Customer.

FINRA recently released Regulatory Notice 20-38 which announced FINRA's adoption of a new rule (FINRA Rule 3241) to limit any registered person from being named a beneficiary, executor or trustee, or to have a power of attorney or similar position of trust for a customer.

The new rule requires a firm to review and approve or disapprove the registered person's request. The rule does not apply to members of the registered person's "immediate family."

F. Election Results – State Insurance Commissioners.

The results of the recent elections confirmed that the ongoing role of several incumbent state insurance commissioners and elected one new insurance commissioner.

The following incumbent state insurance commissioners were re-elected:

- Delaware - Trinidad Navarro;
- North Carolina - Mike Causey;
- North Dakota - Jon Godfread; and
- Washington - Mike Kreidler.

For states in which the governor appoints the insurance commissioner including Indiana, Missouri, New Hampshire, Utah, Vermont and West Virginia, there were no changes in the political party of the current occupants of the governors' offices. Therefore, it is assumed that state insurance commissioners in these states will remain in their current roles.

V. CEFLI Activities.

A. Compliance Fundamentals Training Conference - November 19 and 20.

The 2020 Compliance Fundamentals Training Conference is scheduled to take place virtually on November 19 and 20. Registration is available free of charge to all CEFLI member company representatives.

The Compliance Fundamentals Training Conference is designed for individuals who are new to the life insurance industry or new to the compliance function within a life insurance company.

B. Joint Webinar - CEFLI Affiliate Member Maynard Cooper & Gale - Attorney-Client Privilege - Wednesday, October 28.

CEFLI recently conducted a Joint Webinar with CEFLI Affiliate Member law firm Maynard Cooper & Gale to discuss the application of Attorney-Client Privilege within life insurance companies.

The materials developed for purposes of this session explored the legal principles underlying the application of attorney-client privilege issues within organizations.

Copies of the slides and audio from this presentation are available for reference purposes on the CEFLI website.

Our thanks to CEFLI Affiliate Member law firm Maynard Cooper & Gale for sharing their expertise on this important subject matter.

C. Joint Webinar - CEFLI Affiliate Member Locke Lord - The Future of Market Regulation - Post COVID-19 Environment - Wednesday, November 18 – 1 PM EST.

CEFLI is pleased to announce an upcoming Joint Webinar with CEFLI Affiliate Member Locke Lord to explore The Future of Market Regulation in a Post COVID-19 Environment. Michael Rohan, former Deputy Director of Market Regulation for the Illinois Department of Insurance and now Of Counsel in the Insurance Regulatory and Transactional Group at Locke Lord will serve as our faculty member for the webinar.

The Joint Webinar scheduled to take place on Wednesday, November 18 at 1 PM EST.

D. Compliance Leadership Development Forum - Wednesday, December 3 -
2 PM-3:30 PM EST.

CEFLI will be conducting the first meeting of its Compliance Leadership Development Forum on Wednesday, December 3 at 2 PM-3:30 PM EST. The Compliance Leadership Development Forum has been convened to allow aspiring compliance leaders in our industry to meet virtually in four separate sessions over the course of the next 12 months to explore the essential attributes necessary to be effective as a compliance leader in the life insurance industry.

A communication was delivered to all member companies recently to allow Chief Compliance Officers to identify a limited number of individuals from each company to participate in the Compliance Leadership Development Forum.

Please contact Mallory Hart (MalloryHart@cefli.org) on CEFLI's staff for more information.

VI. Next Meeting.

The next meeting of the Committee is scheduled to take place:

Wednesday, December 16, 2020 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Please mark your calendar and plan to join us!

VII. Other Business.

There being no additional business the meeting was adjourned.

NAIC Model Laws, Regulations, Guidelines and Other Resources

UNFAIR TRADE PRACTICES ACT

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Section 4. Unfair Trade Practices Defined

Any of the following practices, if committed in violation of Section 3, are hereby defined as unfair trade practices in the business of insurance:

- A. Misrepresentations and False Advertising of Insurance Policies. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:
- (1) Misrepresents the benefits, advantages, conditions or terms of any policy; or
 - (2) Misrepresents the dividends or share of the surplus to be received on any policy; or
 - (3) Makes a false or misleading statement as to the dividends or share of surplus previously paid on any policy; or
 - (4) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates; or
 - (5) Uses any name or title of any policy or class of policies misrepresenting the true nature thereof; or
 - (6) Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy; or
 - (7) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or
 - (8) Misrepresents any policy as being shares of stock.

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- B. False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.
- C. Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure such insurer.
- D. Boycott, Coercion and Intimidation. Entering into any agreement to commit, or by any concerted action committing any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.
- E. False Statements and Entries.
 - (1) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer.
 - (2) Knowingly making any false entry of a material fact in any book, report or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, or knowingly making any false material statement to any insurance department official.
- F. Stock Operations and Advisory Board Contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to purchase insurance.
- G. Unfair Discrimination.
 - (1) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such policy.
 - (2) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable thereunder, or in any of the terms or conditions of such policy, or in any other manner.
 - (3) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

Drafting Note: In the event that unfair discrimination in connection with accident and health coverage is treated in other statutes, this paragraph should be omitted.

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- (4) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on the residential property risk, or the personal property contained therein, solely because of the age of the residential property.
- (5) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, marital status, race, religion or national origin of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits. Nothing in this section shall prohibit or limit the operation of fraternal benefit societies.
- (6) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to accident and health insurance sold by a casualty insurer and, provided further, that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract.
- (7) Refusing to insure solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy in which that person was the named insured. Nothing herein contained shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance.
- (8) Violation of the state's rescission laws at [insert reference to appropriate code section].

Drafting Note: A state may wish to include this section if it has existing state laws covering rescission and to insert a reference to a particular code section.

H. Rebates.

- (1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such policy, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith, any stocks, bonds or other securities of any company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy.
- (2) Nothing in Subsection G, or Paragraph (1) of Subsection H shall be construed as including within the definition of discrimination or rebates any of the following practices:
 - (a) In the case of life insurance policies or annuities, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;
 - (b) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

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- (c) Readjusting the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year; or
- (d) Engaging in an arrangement that would not violate Section 106 of the Bank Holding Company Act Amendments of 1972 (12 U.S.C. 1972), as interpreted by the Board of Governors of the Federal Reserve System, or Section 5(q) of the Home Owners' Loan Act, 12 U.S.C. 1464(q).
- (e) The offer or provision by insurers or producers, by or through employees, affiliates or third party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the policy of insurance if the product or service:
 - (i) Relates to the insurance coverage; and
 - (ii) Is primarily designed to satisfy one or more of the following:
 - (I) Provide loss mitigation or loss control;
 - (II) Reduce claim costs or claim settlement costs;
 - (III) Provide education about liability risks or risk of loss to persons or property;
 - (IV) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
 - (V) Enhance health;
 - (VI) Enhance financial wellness through items such as education or financial planning services;
 - (VII) Provide post-loss services;
 - (VIII) Incent behavioral changes to improve the health or reduce the risk of death or disability of a customer (defined for purposes of this subsection as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant); or
 - (IX) Assist in the administration of the employee or retiree benefit insurance coverage.
 - (iii) The cost to the insurer or producer offering the product or service to any given customer must be reasonable in comparison to that customer's premiums or insurance coverage for the policy class.
 - (iv) If the insurer or producer is providing the product or service offered, the insurer or producer must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

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- (v) The commissioner may adopt regulations when implementing the permitted practices set forth in this statute to ensure consumer protection. Such regulations, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure and unfair discrimination.
- (vi) The availability of the value-added product or service must be based on documented objective criteria and offered in a manner that is not unfairly discriminatory. The documented criteria must be maintained by the insurer or producer and produced upon request by the Department.

Drafting Note: States may wish to consider alternative language based on their filing requirements.

- (vii) If an insurer or producer does not have sufficient evidence, but has a good-faith belief that the product or service meets the criteria in H(2)(e)(ii), the insurer or producer may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for no more than one year. An insurer or producer must notify the Department of such a pilot or testing program offered to consumers in this state prior to launching and may proceed with the program unless the Department objects within twenty-one days of notice.

Drafting Note: This Section is not intended to limit or curtail existing value-added services in the marketplace. It is intended to promote innovation in connection with the offering of value-added services while maintaining strong consumer protections.

- (f) An insurer or a producer may:
 - (i) Offer or give non-cash gifts, items, or services, including meals to or charitable donations on behalf of a customer, in connection with the marketing, sale, purchase, or retention of contracts of insurance, as long as the cost does not exceed an amount determined to be reasonable by the commissioner per policy year per term. The offer must be made in a manner that is not unfairly discriminatory. The customer may not be required to purchase, continue to purchase or renew a policy in exchange for the gift, item or service.
 - (ii) Offer or give non-cash gifts, items, or services including meals to or charitable donations on behalf of a customer, to commercial or institutional customers in connection with the marketing, sale, purchase, or retention of contracts of insurance, as long as the cost is reasonable in comparison to the premium or proposed premium and the cost of the gift or service is not included in any amounts charged to another person or entity. The offer must be made in a manner that is not unfairly discriminatory. The customer may not be required to purchase, continue to purchase or renew a policy in exchange for the gift, item or service.
 - (iii) Conduct raffles or drawings to the extent permitted by state law, as long as there is no financial cost to entrants to participate, the drawing or raffle does not obligate participants to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is

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not unfairly discriminatory. The customer may not be required to purchase, continue to purchase or renew a policy in exchange for the gift, item or service.

Drafting Note: If a state wishes to limit (f) to a stated monetary limit the committee would suggest that, at the time of the drafting of this model, the lesser of 5% of the current or projected policyholder premium or \$250 would be an appropriate limit, however specific prohibitions may exist related to transactions governed by the Real Estate Settlement Procedures Act of 1974 and the laws and regulations governing the Federal Crop Insurance Corporation Risk Management Agency. States may want to consider a limit for commercial or institutional customers.

- (3) An insurer, producer or representative of either may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words “free”, “no cost” or words of similar import, in an advertisement.

Drafting Note: Section 104 (d)(2)(B)(viii) of the Gramm-Leach-Bliley Act provides that any state restrictions on anti-tying may not prevent a depository institution or affiliate from engaging in any activity that would not violate Section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System. The Board of Governors of the Federal Reserve System has stated that nothing in its interpretation on combined-balance discount arrangements is intended to override any other applicable state and federal law. FRB SR 95-32 (SUP). Section 5(q) of the Home Owners’ Loan Act is the analogous provision to Section 106 for thrift institutions. The Office of Thrift Supervision has a regulation 12 C.F.R. 563.36 that allows combined-balance discounts if certain requirements are met.

Drafting Note: Each state may wish to examine its rating laws to ensure that it contains sufficient provisions against rebating. If a state does not, this section may be expanded to cover all lines of insurance.

- I. Prohibited Group Enrollments. No insurer shall offer more than one group policy of insurance through any person unless such person is licensed, at a minimum, as a limited insurance representative. However, this prohibition shall not apply to employer/employee relationships, nor to any such enrollments.
- J. Failure to Maintain Marketing and Performance Records. Failure of an insurer to maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained.
- K. Failure to Maintain Complaint Handling Procedures. Failure of any insurer to maintain a complete record of all the complaints it received since the date of its last examination under Section [insert applicable section]. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this subsection, “complaint” shall mean any written communication primarily expressing a grievance.
- L. Misrepresentation in Insurance Applications. Making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit from any provider or individual person.
- M. Unfair Financial Planning Practices. An insurance producer:
 - (1) Holding himself or herself out, directly or indirectly, to the public as a “financial planner,” “investment adviser,” “consultant,” “financial counselor,” or any other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when such person is in fact engaged only in the sale of policies. This provision does not preclude persons who hold some form of formal recognized financial planning or consultant certification or designation from using this certification or designation when they are only selling insurance. This does not permit persons to charge an additional fee for

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services that are customarily associated with the solicitation, negotiation or servicing of policies.

- (2) (a) Engaging in the business of financial planning without disclosing to the client prior to the execution of the agreement provided for in Paragraph 3, or solicitation of the sale of a product or service that
 - (i) He or she is also an insurance salesperson, and
 - (ii) That a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case.
- (b) The disclosure requirement under this subsection may be met by including it in any disclosure required by federal or state securities law.
- (3) (a) Charging fees other than commissions for financial planning by insurance producer, unless such fees are based upon a written agreement, signed by the party to be charged in advance of the performance of the services under the agreement. A copy of the agreement must be provided to the party to be charged at the time the agreement is signed by the party.
 - (i) The services for which the fee is to be charged must be specifically stated in the agreement.
 - (ii) The amount of the fee to be charged or how it will be determined or calculated must be specifically stated in the agreement.
 - (iii) The agreement must state that the client is under no obligation to purchase any insurance product through the insurance producer or consultant.

Drafting Note: This subsection is intended to apply only to persons engaged in personal financial planning.

- (b) The insurance producer shall retain a copy of the agreement for not less than three (3) years after completion of services, and a copy shall be available to the commissioner upon request.

N. Failure to file or to certify information regarding the endorsement or sale of long-term care insurance. Failure of any insurer to:

- (1) File with the insurance department the following material:
 - (a) The policy and certificate;
 - (b) A corresponding outline of coverage; and
 - (c) All advertisements requested by the insurance department; or
- (2) Certify annually that the association has complied with the responsibilities for disclosure, advertising, compensation arrangements, or other information required by the commissioner, as set forth by regulation.

O. Failure to Provide Claims History

- (1) Loss Information—Property and Casualty. Failure of a company issuing property and casualty insurance to provide the following loss information for the three (3) previous policy years to the first named insured within thirty (30) days of receipt of the first named insured's written request:

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- (a) On all claims, date and description of occurrence, and total amount of payments; and
 - (b) For any occurrence not included in Subparagraph (a) of this paragraph, the date and description of occurrence.
- (2) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under Paragraph (1), the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this subparagraph to the first named insured as soon as possible, but in no event later than twenty (20) days of receipt of the written request. Notwithstanding any other provision of this section, no insurer shall be required to provide loss reserve information, and no prospective insurer may refuse to insure an applicant solely because the prospective insurer is unable to obtain loss reserve information.
- (3) The commissioner may promulgate regulations to exclude the providing of the loss information as outlined in Paragraph (1) for any line or class of insurance where it can be shown that the information is not needed for that line or class of insurance, or where the provision of loss information otherwise is required by law.

Drafting Note: Loss information on workers' compensation is an example in some states of loss information otherwise required by law.

- (4) Information provided under Paragraph (2) shall not be subject to discovery by any party other than the insured, the insurer and the prospective insurer.

Drafting Note: This provision may not be required in states that have a privacy act that governs consumer access to this information. Those states considering applying this requirement to life, accident and health lines of insurance should first review their state privacy act related to issues of confidentiality of individual insured information.

P. Violating any one of Sections [insert applicable sections].

Drafting Note: Insert section numbers of any other sections of the state's insurance laws deemed desirable or necessary to include as an unfair trade practice, such as cancellation and nonrenewal laws.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1947 Proc. 383, 392-400, 413 (adopted).
1960 Proc. II 485-487, 509-515, 516 (reprinted).
1972 Proc. I 15, 16, 443-444, 491, 493-501 (amended and reprinted).
1977 Proc. I 26, 28, 211, 226-227 (amended).
1979 Proc. II 31, 34, 38, 39, 525 (amended).
1985 Proc. I 19, 39, 85-86 (amended).
1989 Proc. II 13, 21, 129-130, 132, 133-140) (amended and reprinted).
1990 Proc. I 6, 25, 122, 146 (changed name of model).
1990 Proc. II 7, 13-14, 160, 169-177 (amended and reprinted).
1991 Proc. I 9, 16, 192-193, 196-203 (amended and reprinted).
1993 Proc. I 8, 136, 242, 246-254 (amended and reprinted).
1993 Proc. 1st Quarter 3, 34, 267, 274, 276 (amended).
2001 Proc. 2nd Quarter 7, 9, 836, 843-853 (amended and reprinted).