

Agenda

**CEFLI Regulatory Forum Meeting
Tuesday, May 25, 2021
2 PM-3:30 PM EDT/1 PM-2:30 PM CDT/11 AM-12:30 PM PDT
Via CiscoWebEx**

Link: <https://cefli.webex.com/cefli/j.php?MTID=mbcaa84142006db3a91888007ef66bac3>
Meeting Number: 132 545 1561
Password: ethics2021

- I. Welcome and Introduction. Donald J. Walters**
- II. Antitrust Statement. Donald J. Walters**
- III. Update on the DOL Fiduciary Rule. Fred Reish
Partner, Faegre Drinker**

We are pleased and honored to have with us, Fred Reish, Partner with CEFLI Affiliate Member law firm Faegre Drinker, who is known as one of the nation's leading authorities on retirement plans and retirement planning issues within the financial services industry.

Fred will provide an update on recent developments related to the DOL Fiduciary Rule and related operational impacts for life insurance companies.

Our thanks to our friends at Faegre Drinker for their support of this session.

Please be advised that CEFLI maintains [Additional Resources](#) concerning developments related to the DOL Fiduciary Rule including a series of recent articles published by Fred Reish concerning the DOL Fiduciary Rule.

IV. Overview and Discussion of Current Regulatory Issues. Regulatory Forum

A. COVID-19 - Future Operational and Regulatory Strategies.

Our nation continues to increase the number of individuals who have received COVID-19 vaccinations and, as a result, our country is starting to "open up."

During the COVID-19 pandemic, representatives of life insurance companies and other organizations had to work remotely. This new work environment presented unique challenges for compliance and ethics professionals.

Now, as the pandemic begins to abate, companies are exploring return to work plans and the implications for home office policies and procedures and work-at-home strategies.

Moreover, the increased willingness to conduct off-site activities may lead to modifications to current COVID-19-related strategies implemented by state insurance regulators and federal securities regulators to address the constraints of the COVID-19 pandemic environment.

Members of the Regulatory Forum will be asked to share their perspectives on recent developments related to the COVID-19 pandemic and the implications of these events for company compliance and return to work strategies and regulatory practices in the months ahead.

B. State Adoptions of the NAIC Suitability in Annuity Transactions Model Regulation.

Over the past several months, states have continued to adopt the revised version of the NAIC Suitability in Annuity Transactions Model Regulation.

To date, we have identified the following states as having adopted the Model Regulation: Arizona, Arkansas, Delaware, Idaho, Iowa, Michigan, Nebraska, North Dakota, Ohio, and Rhode Island.

We also understand that proposals to adopt the revised version of the Model Regulation have been introduced in the following states: Alabama, Connecticut, Kentucky, Maine, Montana, Nevada, Texas, and Virginia.

As states continue to adopt the revised version of the Model Regulation, companies are faced with various compliance challenges associated with implementing the new requirements of the revised Model Regulation. Specifically, companies must revise current strategies and develop new strategies to comply with the requirements of the revised Model Regulation. As more states adopt the Model Regulation, companies also must determine how they will implement these requirements on a state-by-state basis.

Members of the Regulatory Forum will be asked to discuss compliance challenges associated with implementing the requirements of the revised NAIC Suitability in Annuity Transactions Model Regulation and the strategies to implement these requirements as states continue to adopt the revised Model Regulation.

C. NAIC Suitability in Annuity Transactions Model Regulation - Frequently Asked Questions (FAQs).

The Annuity Suitability (A) Working Group has continued their work to develop a Frequently Asked Questions (FAQs) document to assist states in their efforts to adopt the Model Regulation and to clarify for various stakeholders the application of some of the Model Regulation's requirements.

The Working Group adopted a [final draft](#) of the FAQs on May 10, 2021.

Members of the Regulatory Forum will be asked to discuss the key elements of the FAQs and will discuss future plans for final approval of the FAQs by the NAIC.

D. New York Regulation 187 Deemed "Unconstitutionally Vague."

On April 29, the Appellate Division of the New York State Supreme Court struck down New York's Regulation 187 for being "unconstitutionally vague." (A copy of the Appellate Division decision can be found [here](#).)

In its unanimous decision, the Appellate Division stated, in pertinent part, that "...[Regulation 187] fails to provide sufficient concrete, practical guidance for producers to know whether their conduct, on a day-to-day basis, comports with [Regulation 187's] corresponding requirements for making recommendations in compiling and evaluating the relevant suitability information of the consumer."

Members of the Regulatory Forum will be asked to discuss the implications for state insurance regulation of the Appellate Division's decision to strike down New York's Regulation 187. Members of the Regulatory Forum also will be asked to discuss the possible implications of this decision, if any, on the application of "best interest" standards in state insurance and federal securities regulation.

E. Regulation Best Interest and Form CRS Exams.

Over the past several months, it is our understanding that the SEC and FINRA have conducted examinations to determine compliance with Regulation Best Interest and Form CRS.

Feedback from the initial rounds of examination activities reported that these initial exams were designed to determine a "good faith effort" to comply with the requirements of Regulation Best Interest and Form CRS.

Now that we are approaching the one-year anniversary of the effective date of Regulation Best Interest (i.e., June 30, 2020), recent media reports have

indicated that examinations may be focused on determining actual compliance with the requirements of Regulation Best Interest and Form CRS.

Members of the Regulatory Forum will be asked to discuss recent examination activities and whether these activities will be focused on determining actual compliance with the requirements of Regulation Best Interest and Form CRS (rather than a demonstration of a “good faith effort” to comply). Additionally, members of the Regulatory Forum will be asked to suggest areas of potential compliance improvement for firms and life insurance companies as they implement the requirements of Regulation Best Interest and Form CRS.

F. 2021 SEC Examination Priorities Report.

Since the Forum’s last meeting, the SEC published its [2021 Examination Priorities Report](#).

Issues identified in the Examination Priorities Report include:

- Regulation Best Interest and Form CRS;
- The Importance of Compliance;
- Frauds;
- Sales practices;
- Conflicts of Interest;
- Cybersecurity;
- Anti-Money-Laundering; and
- RIA Compliance Programs.

Members of the Regulatory Forum will be asked to discuss the 2021 SEC Examination Priorities Report.

G. 2021 FINRA Examination and Risk Monitoring Program Report.

Since the Forum’s last meeting, FINRA also published its [2021 Examination and Risk Monitoring Program Report](#).

Issues identified in the Examination and Risk Monitoring Program Report include:

- Regulation Best Interest and Form CRS;
- Anti-Money-Laundering;
- Cybersecurity and Technology Governance;
- Communications with the Public; and
- Variable Annuities.

Members of the Regulatory Forum will be asked to discuss the 2021 FINRA Examination and Risk Monitoring Program Report.

H. SEC Risk Alert - AML - Suspicious Activity Reporting and Monitoring.

The SEC's Division of Examinations recently issued a [Risk Alert](#) to share observations concerning compliance issues associated with Suspicious Activity Reporting and Monitoring at broker-dealers.

In addition to reminding firms of their into money-laundering obligations under the Bank Secrecy Act, the Risk Alert also identified the following compliance issues:

- Inadequate AML policies and procedures;
- Failure to implement AML procedures;
- Failure to respond to suspicious activity; and
- Filing inaccurate or incomplete Suspicious Activity Reports (SARs).

While the SEC's Risk Alert discusses compliance obligations at broker-dealers, the Risk Alert can serve to inform the evaluation of AML compliance programs at life insurance companies as well.

Members of the Regulatory Forum will be asked to discuss the key findings of the SEC's Risk Alert concerning Suspicious Activity Reporting and Monitoring.

I. FINRA Regulatory Notice 21-18 - Account Takeovers.

FINRA recently issued [Regulatory Notice 21-18](#) to share practices that firms used to protect customers from account takeover attempts as a potential cybersecurity risk.

Recognizing that account takeover attempts continue to pose an ongoing cybersecurity risk, FINRA organized roundtable discussions with several firms to discuss their strategies to mitigate potential account takeover risks.

The Regulatory Notice reviews the practices firms have found the effective in mitigating account takeover risks including the use of new innovations in cybersecurity risk management.

Members of the Regulatory Forum will be asked to discuss the prevalence of account takeover activity in the financial services industry and steps firms have taken to mitigate these potential risks.

J. FINRA Initiative - Augmenting the Exam and Risk Monitoring Program with Data Analytics and Technology.

FINRA Member Supervision has established a Data Analytics and Technology Team to explore how data can be used to establish efficiencies in examination activities. A recent [podcast](#) with Kerry Gendron, FINRA Member Supervision's Senior Vice President of Data Analytics and Technology, provides further background on this initiative.

As organizations become more proficient in their use of data analysis for compliance purposes, regulators also are exploring how data analysis can be used to focus regulatory resources more effectively.

Members of the Forum will be asked to discuss the FINRA Initiative to establish a Data Analytics and Technology Team within FINRA Member Supervision to explore how data analytics can assist examiners in future regulatory oversight activities.

K. NAIC Update.

1. Privacy Policy Statement - Privacy Protections (D) Working Group.

The NAIC's [Privacy Protections \(D\) Working Group](#) is developing a draft [Privacy Policy Statement](#) to provide data privacy protections for consumers.

Though Working Group is exploring whether the Privacy Policy Statement can serve as revisions to the NAIC's Privacy of Consumer Financial and Health Information Model Regulation (#672) or whether a new Model Regulation may be necessary.

The Working Group's effort is part of the NAIC Member Adopted Strategy for Consumer Data Privacy Protections developed by the NAIC Market Regulation and Consumer Affairs (D) Committee.

NAIC Staff will discuss the NAIC's effort to develop a Privacy Policy Statement through the work of the NAIC's Privacy Protections (D) Working Group.

2. Accelerated Underwriting Education Paper.

The NAIC's [Accelerated Underwriting \(A\) Working Group](#) is developing a [paper](#) to educate regulators and insurers regarding the use of accelerated underwriting in life insurance.

The Working Group has explored the use of external data and data analytics to examine the manner in which data is used as part of the accelerated underwriting process in life insurance.

The Education Paper will serve as guidance for states insurance regulators when conducting regulatory oversight activities pertaining to the use of accelerated underwriting life insurance.

NAIC Staff will discuss the NAIC's Accelerated Underwriting Education Paper initiative.

3. Life Insurance Policy Locator Modifications.

The NAIC maintains a [life insurance policy locator](#) to assist consumers in identifying life insurance policies so they can consider whether they may be eligible for benefits under these policies.

The NAIC has worked closely with several states to coordinate and ease the ability of consumers (and life insurance companies) to use the NAIC's Life Insurance Policy Locator Service the NAIC recently introduced modifications to the Life Insurance Policy Locator Service.

NAIC Staff will discuss recent modifications to the NAIC's Life Insurance Policy Locator Service.

4. The NAIC's Online Fraud Reporting System.

The NAIC maintains an [Online Fraud Reporting System](#) to allow companies and individuals to report suspected fraud.

The NAIC's Online Fraud Reporting System will be upgraded shortly and will undergo beta testing very soon.

NAIC Staff will discuss recent upgrades and further developments related to the NAIC's Online Fraud Reporting System.

L. Leadership Changes.

1. Gary Gensler - New SEC Chair.

Gary Gensler, former Chair of the Commodity Futures Trading Commission under the Obama administration, was nominated by President Biden to serve as the next Chair of the SEC and was confirmed by the U.S. Senate.

2. Melissa Hodgman - Acting Director of the Division of Enforcement.

Melissa Hodgman has been named as Acting Director of the SEC's Division of Enforcement following the brief tenure of Alex Oh, the SEC's previous Director of the Division of Enforcement. Ms. Hodgman served previously as an Associate Director in the Division of Enforcement prior to the appointment of Ms. Oh as the Director of the Division of Enforcement.

V. Other Business.