July 12, 2019

Submitted Electronically to jmatthews@naic.org

The Honorable Jillian Froment
Director, Ohio Department of Insurance
Chair, NAIC Annuity Suitability (A) Working Group

The Honorable Doug Ommen
Commissioner, Iowa Insurance Division
Vice Chair, NAIC Annuity Suitability (A) Working Group

Subject: Request for Comments re: Best Interest Standard of Conduct in Annuity Transactions

Dear Director Froment and Commissioner Ommen:

The following is submitted on behalf of the undersigned trade groups in response to your request for comment on the below questions regarding the proposed Conflict of Interest and Care Obligations. The undersigned remain committed to a harmonized best interest standard of care across all regulatory platforms. However, we also appreciate the NAIC's ongoing efforts to critically think through those provisions outlined in the SEC's Regulation Best Interest that may not be designed for – nor intended to be applied to – non-registered annuity products distributed through independent distribution.

We appreciate the opportunity to comment, and respectfully submit the following in response to the questions posed by Chairwoman Froment:

Topic: Conflict of Interest

Question 1: What constitutes a material conflict of interest when recommending annuities?

The most recent NAIC draft of the Suitability in Annuity Transactions Model Regulation (Iowa draft, dated 5/30/19) defines a material conflict of interest as "a financial interest of the producer, or the insurer where no producer is involved, in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation" (See Iowa draft, Sec. 5.K). We believe this is a workable definition of a material conflict of interest.

At this point, for the reasons discussed in the response to the following question, we do not think that the definition of conflict of interest in the SEC's Regulation Best Interest would be workable.

Question 2: When a material conflict of interest exists, how should an insurer and/or a producer avoid or otherwise reasonably manage the conflict?

The undersigned generally supports harmonization of the NAIC annuity suitability rule with FINRA and SEC rules, including new SEC Regulation Best Interest. However, the undersigned cautions the

Working Group that the conflict of interest construct reflected in Regulation Best Interest, which considers securities transaction-related compensation to present conflicts, is based on a business model that is dissimilar from the annuity distribution model in two significant respects:

- *Compensation for securities transactions effected by broker-dealers varies widely depending on the nature of the transaction. For example, broker-dealers may charge commissions to customers for effecting certain types of securities transactions but receive compensation from an issuer for other types of securities transactions. The amount and basis for the compensation also can vary from one security to the next, even in the case of similar securities. Also, broker-dealers can negotiate, discount and rebate certain commissions and fees for customers. In contrast, in the case of annuity distribution, in almost all cases the commissions are solely determined and paid by the insurer issuing the annuity contract, and insurance laws generally prohibit any rebating or negotiation of this compensation with purchasers.*
- *Broker-dealer sales representatives are effectively required to conduct the entirety of their securities business through a single broker-dealer that in turn is required to supervise that securities business and has the authority to determine and control the compensation received by the sales representatives. In contrast, insurance producers can solicit on behalf of multiple, unrelated insurers, with each insurer setting compensation for its own products without regard to or insight into the compensation practices of the other insurers.*

The Working Group should take these dissimilarities into account in determining what constitutes a "conflict" in the context of an annuity recommendation by a producer and how that conflict should be addressed. To the extent that a producer's receipt of compensation is considered to be a "conflict" under the NAIC rule – regardless of whether the conflict is conceptualized as the receipt of non-cash compensation or production-based compensation or, alternatively, is considered to include regular cash commissions -- disclosure (and disclosure alone) should be the approach for addressing the conflict.

Topic: Care Obligation

Question 1: Should the care obligation of a producer include "prudence"?

The care obligation should not include "prudence". As the SEC determined in its final Regulation Best Interest rule, including this term creates legal uncertainty and unnecessary confusion. Requiring producers to exercise "diligence, care, and skill" throughout the annuity transaction process conveys the importance of conducting a proper evaluation of the annuity recommendation and advances the goal of enhancing the current standard of care to ensure that producers are acting in the best interest of the consumer.

Question 2: "Reasonable for an ordinary producer in a similar circumstance to recommend." Is this an appropriate standard for a producer when making a recommendation?

We do not think that this standard is an appropriate standard for the care obligation. It is an unfamiliar standard. Under the Care Obligation in the current NAIC draft, a producer is required to have a "reasonable basis" to believe that, after making a reasonable inquiry into the annuity options available to the producer, the recommended option would be best suited to the consumer over the life of the

product, as evaluated in light of the consumer's profile information and under the present circumstances known at the time of the recommendation. We believe this is a sufficient standard.

Question 3: "Provide an oral or written description of the basis of the recommendation to the consumer." When considering this requirement for a producer, is it appropriate to allow both oral and/or written descriptions?

In the interest of providing flexibility to accommodate different practices, we think it is appropriate to allow both oral and/or written descriptions of the basis of the recommendation to the consumer. While a written description is generally a best practice under many scenarios, such flexibility is necessary to allow for different methods of communication that may occur between a producer and consumer. In addition, it is important to note that under the Documentation Obligation in Iowa's draft, the producer is obligated to make a written record of any recommendation and the basis for the recommendation. As a result, such written record will already be documented, and allowing the producer to convey this basis in the most appropriate way to the consumer should be the aim of the rule (See Iowa draft, Sec. 6.A(4)(a)).

The undersigned appreciate the Working Group's consideration of our views and would be glad to answer any questions.

Sincerely,

ASSOCIATION FOR ADVANCED LIFE UNDERWRITING (AALU)

Marc Cadin
Chief Executive Officer
cadin@aalu.org

INSURED RETIREMENT INSTITUTE (IRI)

Jason Berkowitz
Chief Legal & Regulatory Affairs Officer
jberkowitz@irionline.org

COMMITTEE OF ANNUITY INSURERS (CAI)
For the Committee of Annuity Insurers, By:

Eversheds Sutherland (US) LLP

Eversheds Sutherland (US) LLP
ericarnold@eversheds-sutherland.com
susankrawczyk@eversheds-sutherland.com

NATIONAL ASSOCIATION FOR FIXED ANNUITIES (NAFA)

Pamela M. Heinrich
General Counsel
pam@nafa.com

INDEXED ANNUITY LEADERSHIP COUNCIL (IALC)

Jim Poolman
Executive Director
jimpoolman@gmail.com

NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS (NAIFA)

Gary Sanders
Counsel and Vice President, Government Relations
gsanders@naifa.org