



April 27, 2018

Submitted Electronically to jmatthews@naic.org

The Honorable Dean Cameron
Director, Idaho Department of Insurance
Chairman, NAIC Annuity Suitability (A)
Working Group
700 West State Street, 3rd Floor
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The Honorable Doug Ommen
Commissioner, Iowa Insurance Division
Vice Chairman, NAIC Annuity Suitability (A)
Working Group
Two Ruan Center
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Des Moines, IA 50309-3738

Re: Potential Revisions to the Suitability in Annuity Transactions Model Regulation (#275)

Dear Director Cameron and Commissioner Ommen:

The undersigned organizations (collectively, the “Industry Groups”) appreciate the opportunity to provide these comments in response to the request by the National Association of Insurance Commissioners (“NAIC”) Annuity Suitability (A) Working Group (the “Working Group”) for comments regarding potential revisions to the Suitability in Annuity Transactions Model Regulation (#275) (the “Suitability Model”) to “establish a best interest/consumer-focused approach and/or process for the sale of annuity products to consumers.”¹

The Industry Groups commend you and the Working Group for recognizing the importance of this issue and for seeking public input to help the NAIC as it considers whether and how to amend the Suitability Model to establish an enhanced standard of conduct for insurance producers and insurers when making annuity recommendations to individual consumers.² The vast majority of producers already act in their clients’ best interest when providing personalized

¹ See email message from Jolie Matthews, NAIC Senior Health and Life Policy Counsel, to Working Group members, interested regulators, and interested parties, dated March 24, 2018.

² Unless otherwise expressly stated, terms used in this letter that are defined in the current Suitability Model (e.g., “insurance producer,” “insurer,” “recommendation,” etc.) have the meanings ascribed to those terms therein.

recommendations, and the Industry Groups have long supported the principle that financial professionals³ should be required to meet this standard.

At your request, the Industry Groups have undertaken an effort over the past 30 days to reach consensus on general principles or specific revisions to the Suitability Model to achieve this goal. The result of those efforts is set forth in this letter, including a partial markup of the Suitability Model (attached as Appendix A) and a set of guiding principles (attached as Appendix B) reflecting points on which the Industry Groups have tentatively reached consensus as of the date of this letter. The Industry Groups intend to continue our review of these matters and will endeavor to provide additional comments regarding the Suitability Model in one or more supplemental comment letters as these ongoing efforts proceed.

In addition, the Industry Groups note that the Securities and Exchange Commission ("SEC") issued three regulatory proposals (collectively, the "SEC Proposal")⁴ on April 18, 2018, to enhance the standards of conduct and other rules applicable to investment professionals under the federal securities laws. The Industry Groups and their respective members are currently in the very early stages of reviewing and assessing the SEC Proposal. Given the importance of regulatory coordination among the NAIC, the SEC, and other regulators (as discussed below), the Industry Groups respectfully reserve the right to modify any or all of the comments set forth in this letter in light of the SEC Proposal. Any such modifications will be set forth in supplemental comment letters to the Working Group.

General Comments

As a preliminary matter, the Industry Groups believe it is important to acknowledge and recognize the effectiveness of the Suitability Model. The NAIC initially adopted the Suitability Model in 2003 to protect seniors against inappropriate sales practices. Revisions to that original version over the past 15 years have, among other things, extended the protections of the Suitability Model to all consumers and established insurer supervision and producer training requirements. As a result of these efforts, the Suitability Model now provides an effective regulatory framework to protect consumers. Following adoption of the U.S. Department of Labor ("DOL") fiduciary rule⁵ in 2016, the NAIC formed the Working Group to explore ways to

³ The term "financial professional" is used throughout this letter to refer to any individual who provides advice or recommendations about annuities or other insurance or investment products, including state-regulated insurance producers as well as securities-licensed representatives of broker-dealer or investment adviser firms.

⁴ See Regulation Best Interest, Exchange Act Release No. 34-83062 (April 18, 2018); Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, Exchange Act Release No. 34-83063 (April 18, 2018); and Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, Investment Advisers Act Release No. IA-4889 (April 18, 2018).

⁵ As used in this letter, the term "DOL Rule" means, collectively, the final regulation defining the term "fiduciary" (the "Fiduciary Definition Regulation") under the Employee Retirement Income Security Act of 1974, as amended

further enhance the Suitability Model, and the Industry Groups appreciate the opportunity to participate in this important endeavor. We also commend the Working Group for recognizing the need for additional input from interested parties following the recent 5th Circuit Court of Appeals decision vacating the DOL Rule.

As many of us have indicated in previous comment letters to the Working Group, the Industry Groups also believe it is essential that all of the appropriate regulatory bodies working to develop enhanced standards of conduct for financial professionals engage in a constructive and collaborative dialogue before adopting any final rules. This effort should include the NAIC, the SEC, the DOL, the Financial Industry Regulatory Authority ("FINRA") and the North American Securities Administrators Association ("NASAA").

As the primary regulators for the insurance and securities industries, the NAIC and the SEC should lead this effort. They have the ability to adopt the most broadly applicable rules, and have robust examination and enforcement tools at their disposal to effectively ensure compliance or penalize violators for non-compliance. Unlike the DOL Rule, which would have applied only to recommendations made with respect to retirement assets, this approach would establish compatible and clear standards of conduct for recommendations made by all licensed financial professionals to retail consumers with respect to any annuity product.

As noted above, the Industry Groups generally believe that producers (and insurers, where no producer is involved) should act in their clients' best interest when making an annuity recommendation, and the partial markup attached as Appendix A would expressly establish a best interest standard by incorporating the following language in Section 6.A:

In making a recommendation to an individual consumer, a producer, or an insurer where no producer is involved, shall act in the best interest of the consumer without placing the financial interests of the producer, or the insurer where no producer is involved, above the consumer's interests.

The mark-up further indicates that a producer or insurer would meet this standard by (a) making reasonable efforts to obtain the consumer's suitability information, (b) providing important disclosures about the nature and scope of available products and services, compensation (as discussed in greater detail below) and material conflicts of interest, (c) satisfying the suitability obligations already in place under the current Suitability Model, and (d) making a record of the basis for the recommendation. We believe these requirements would ensure that producers and insurers are "acting in consumers' best interest," and would

("ERISA"), the Best Interest Contract Exemption (the "BIC Exemption"), and the amendments to prohibited transaction exemption 84-24 (the "Amended PTE 84-24") issued by the DOL on April 8, 2016.

give regulators additional tools to help them identify and pursue enforcement actions against “bad actors” without unduly burdening “good actors.”

We also believe this approach aligns well with the SEC Proposal, although some of the Industry Groups are concerned that some state courts would interpret a “best interest” standard as giving rise to fiduciary status. While we use this term to describe the enhanced standard of conduct in the mark-up, we have also included the following language in Section 6.B(1) in the mark-up in an effort to avoid any such unintended interpretations:

Nothing contained in this regulation shall be deemed to ...[c]ause any producer or insurer to be treated as a fiduciary, or impose a duty of loyalty on any producer or insurer, under common law or any federal or state law or regulation.

The SEC Proposal also states that the best interest standard would require an investment professional to act with reasonable care, skill, diligence and prudence. The mark-up does not include these terms. While some of the Industry Groups would support (or not oppose) the inclusion of one or more of these terms, others are very concerned that these terms would significantly increase the risk that a producer or insurer would be treated as a fiduciary, even if the language noted above is included in the Suitability Model. The Industry Groups will continue to discuss whether and how to include any or all of these terms in the Suitability Model. Among other things, the Industry Groups are considering whether any of these terms can be incorporated in a manner that clearly states their meaning and the steps that must be taken by a producer or insurer to comply with them.

Compensation

As indicated in the attached mark-up and guiding principles, the Industry Groups believe one of the most meaningful enhancements the NAIC could make to the Suitability Model would be the addition of disclosure requirements designed to provide consumers with relevant information they may need to make informed decisions about the financial professional with whom they will work and the products they will purchase. Information about producer compensation would be an appropriate component of a new disclosure requirement. However, it is critical that the compensation disclosure be appropriately tailored.

Compensation is often based on factors that simply are unknown at the time of the recommendation, such as consumer behavior (e.g., future contributions, withdrawals or surrenders). Moreover, the exact amount or percentage of compensation is not likely to be particularly relevant or useful to consumers. Rather, consumers should understand (a) that compensation will be paid, (b) whether and on what basis the amount of compensation on a particular product might rise or fall, (c) how the amount of compensation may vary among different products, (d) what benefits, services, and value the producer will provide, and (e) how

to get more information, if so desired. Put another way, the disclosure requirements should focus on “how” compensation is determined rather than “how much” compensation is paid. The Industry Groups’ proposed approach to disclosure, including compensation disclosure, is outlined in Section 6.A(2) in the attached markup. The Industry Groups believe this disclosure framework would provide consumers with the information they may need to make reasonably informed decisions about whether to consummate the recommended transaction. Any potential expansion of these requirements should be considered carefully to avoid overwhelming consumers with information they don’t really need and may not be able to easily understand, or may not be relevant to their decision making.

Moreover, by providing compensation disclosure, the industry believes a “reasonable compensation” requirement would not be needed. A well-informed marketplace will effectively regulate itself without charging regulators with responsibility for setting or approving compensation rates or structures.

Issues Not Addressed in Attached Markup or Guiding Principles

As noted above, the Industry Groups have been, and will continue, working together to assist the NAIC in its efforts to revise the Suitability Model. In the interest of meeting the current comment deadline, the Industry Groups have focused their efforts to this point on the issues discussed above. However, there are a number of other important issues the Industry Groups have not yet had time to explore, including the following:

- Insurer responsibility for supervision of third party producers under Section 6, which is especially a concern for independent agents who contract with more than a single insurer.
- Possible revisions to the safe harbor provision in Section 6.H to provide relief for producers and insurers when acting in compliance with enhanced standards of conduct that may be adopted by the SEC, FINRA, DOL or other regulators.
- Possible enhancements to the training requirements under Section 7, and possible relief for producers who complete training courses that satisfy applicable FINRA requirements.
- Insurer liability under Section 8 with respect to violations of the Suitability Model by producers when the insurer has fully satisfied its supervision obligations under Section 6.
- Effective date of any revisions to the Suitability Model, and possible grandfathering relief for recommendations made prior to the effective date.

The Industry Groups will submit supplemental comments to the Working Group when and if they are able to comment on these topics and any others that may arise.

Conclusion

Thank you again for the opportunity to provide these comments. If any member of the Working Group has questions about anything in this letter, or if we can be of any further assistance in connection with this important regulatory effort, please feel free to contact any of the undersigned individuals.

Sincerely,

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Appendix A

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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Section 1. Purpose

- A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations made by producers, or by insurers where no producer is involved, to consumers that ~~result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed~~ are suitable and in the best interest of consumers.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.

Section 2. Scope

This regulation shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or by an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

Section 4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- B. Contracts used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (3) A government or church plan defined in section 414 of the IRC, a government or church welfare

- benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;
- (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- (5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- (6) Formal prepaid funeral contracts.

Section 5. Definitions

- A. “Annuity” means an annuity that is an insurance product ~~under~~ State law that is individually solicited, whether the product is classified as an individual or group annuity.
- B. “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].
- C. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].
- D. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
- E. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- F. “Insurance producer” ~~or “producer”~~ means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
- G. “Recommendation” means individualized advice provided by ~~an insurance a~~ producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.
- H. “Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
 - (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
 - (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 - (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
 - (4) Reissued with any reduction in cash value; or
 - (5) Used in a financed purchase.

Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

- I. “Suitability information” means information provided by the consumer that is reasonably appropriate to assist the producer in evaluating whether the ~~determine the suitability of a~~ recommendation satisfies the requirements of this regulation, including the following:

- (1) Age;
- (2) Annual income;
- (3) Financial situation and needs, including the financial resources used for the funding of the annuity;
- (4) Financial experience;
- (5) Financial objectives, including anticipated future income needs;
- (6) Intended use of the annuity;
- (7) Financial time horizon for accumulation and income to be provided by the annuity;
- (8) Existing assets, including investment and life insurance holdings;
- (9) Liquidity needs;
- (10) Liquid net worth;
- (11) Risk tolerance; and
- (12) Tax status.

Section 6. Duties of Insurers and of Insurance Producers

A. ~~In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following: In making a recommendation to an individual consumer, a producer, or an insurer where no producer is involved, shall act in the best interest of the consumer without placing the financial interests of the producer, or the insurer where no producer is involved, above the consumer's interests. A producer, or an insurer where no producer is involved, acts in the best interest of the consumer by:~~

- ~~(1) Making reasonable efforts to obtain the consumer's suitability information;~~
- ~~(2) Providing disclosure of the following information to the consumer at or prior to the time of the recommendation:~~
 - ~~(a) The types of products and services available from the producer;~~
 - ~~(b) Any limitations on the products or services the producer can recommend (such as where the producer is duly authorized to recommend only products issued by particular insurers or a limited range of products);~~
 - ~~(c) The scope of services being provided by the producer, and the scope of the producer's licenses; and~~
 - ~~(d) Material conflicts of interest arising from financial incentives associated with the recommendation, including any direct interest or ownership the producer or an immediate family member of the producer has in the insurer whose product is being recommended;~~
- ~~(1) The consumer has been reasonably informed of~~
 - ~~(e) The various features and benefits of the recommended annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment~~

advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

(f) The sources and types of compensation the producer will or may receive as a result of the recommended transaction; and

(g) Whether and the basis upon which the amount of compensation the producer will or may receive could vary depending on the specific product being recommended; and

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

(3) Having a reasonable basis to believe all of the following at the time of the recommendation:

(a) The recommendation is suitable for the consumer on the basis of the consumer's suitability information and any other relevant facts disclosed by the consumer;

~~(2)~~(b) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, income from annuitization or death or living benefit;

~~(3)~~(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

~~(4)~~(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

~~(a)~~(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

~~(b)~~(ii) The consumer would benefit from product enhancements and improvements; and

~~(c)~~(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(4) Making a record of the recommendation, including the basis for the producer's decision to select the particular annuity being recommended to the individual consumer;

B. Nothing contained in this regulation shall be deemed to:

(1) Cause any producer or insurer to be treated as a fiduciary, or impose a duty of loyalty on any producer or insurer, under common law or any federal or state law or regulation;

(2) Require a producer or insurer to determine that the recommended product is the "best" or "cheapest" product;

(3) Require or prohibit the use of any particular form or type of compensation or compensation arrangement, or any particular type of annuity distribution model (such as proprietary distribution or third-party distribution);

(4) Require disclosure of, or impose any restrictions or prohibitions on, the health, retirement or other employee benefits to which a producer may be entitled; or

(5) Impose on a producer or an insurer any continuing obligation to the consumer after the

recommended annuity is issued.

~~Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.~~

C- Except as permitted under subsection ~~D~~E, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A, B, or ~~C-D~~ related to any annuity transaction if:

- (a) No recommendation is made;
- (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
- (c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
- (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

~~E(3)-~~ At the time of any transaction to which paragraph (1) applies, the An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall ~~at the time of sale:~~

~~(1) Make a record of any recommendation subject to section 6A of this regulation;~~

- ~~(2)~~(a) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
- ~~(3)~~(b) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

E. The offering by an insurance producer, or insurer where no producer is involved, of only proprietary or a limited range of annuity products or product types shall not be in and of itself a violation of any of the requirements of this regulation.

F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve ~~the insurer's and its insurance producers'~~ compliance with this regulation by the insurer and by producers authorized to recommend the insurer's annuity products, including, but not limited to, the following:

- (a) The insurer shall maintain reasonable procedures to inform ~~its insurance~~ producers authorized to recommend the insurer's annuity products of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;
- (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require ~~its insurance~~ producers authorized to recommend the insurer's annuity products to comply with the requirements of section 7 of this regulation;
- (c) The insurer shall provide product-specific training and training materials which explain all

material features of its annuity products to ~~its insurance~~ producers authorized to recommend the insurer's annuity products;

- (d) The insurer shall maintain procedures for review of each recommendation of its annuity products prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
 - (e) The insurer shall maintain reasonable procedures to detect recommendations of its annuity products that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
 - (f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- (2) (a) Nothing in this subsection restricts an insurer ~~from~~ contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
- (b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
- (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- (3) An insurer is not required to consider or have knowledge of other insurers' annuity products that a producer could have recommended to a consumer or include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer that the producer is authorized to recommend.

~~GF.~~ An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

- (1) Truthfully responding to an insurer's request for confirmation of suitability information;
- (2) Filing a complaint; or
- (3) Cooperating with the investigation of a complaint.

~~HG.~~ (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance

commissioner's ability to enforce (including investigate) the provisions of this regulation.

Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
 - (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
 - (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Section 7. Insurance Producer Training

- A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B.
 - (1)
 - (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
 - (b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
 - (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
 - (3) The training required under this subsection shall include information on the following topics:
 - (a) The types of annuities and various classifications of annuities;
 - (b) Identification of the parties to an annuity;
 - (c) How product specific annuity contract features affect consumers;
 - (d) The application of income taxation of qualified and non-qualified annuities;
 - (e) The primary uses of annuities; and
 - (f) Appropriate sales practices, replacement and disclosure requirements.
 - (4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
 - (5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].
 - (6) Annuity training courses may be conducted and completed by classroom or self-study methods in

accordance with [insert reference to State law or regulations governing producer continuing education course approval].

- (7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].
- (8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.
- (9) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 8. Compliance Mitigation; Penalties

- A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:
 - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;
 - (2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and
 - (3) Appropriate penalties and sanctions.
- B. Any applicable penalty under [insert statutory citation] for a violation of -this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Drafting Note: Subsection B above is intended to be consistent with the commissioner's discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

Drafting Note: A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, "shall" should be substituted for "may" in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State's statute that authorizes the commissioner to impose penalties and fines.

Section 9. [Optional] Recordkeeping

- A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States this time period may be five (5) years.

- B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

Section 10. Effective Date

The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on [insert date], whichever is later.

Chronological Summary of Action (All references are to the Proceedings of the NAIC).

2003 Proc. 3rd Quarter 17-18, 24-27, 32, 213 (adopted).

2006 Proc. 2nd Quarter 40, 90 (amended).

2010 Proc. 1st Quarter Vol. I 105-106, 117, 129-139, 146-159, 313 (amended).

2015 Proc. 1st Quarter, Vol. I 117-118, 131-134, 326-335, 431 (amended).

Appendix B

Guiding Principles for Possible Revisions to NAIC Suitability in Annuity Transactions Model Regulation

1. The Suitability Model already provides an effective regulatory framework to protect consumers. However, recognizing the desire of the NAIC to explore ways to enhance this effective model regulation, the industry is committed to assisting the Suitability Working Group in this effort.
2. The Suitability Model can be enhanced by requiring that a producer, or an insurer where no producer is involved, making a recommendation to a consumer must act in the consumer's best interest without putting their own interests above the interests of the consumer by:
 - a. making reasonable efforts to obtain the consumer's suitability information;
 - b. establishing disclosure requirements designed to provide consumers with relevant information they may need to understand the product being recommended, the basis for the producer's decision to recommend that product, and how the producer will be compensated for making the recommendation;
 - c. satisfying the suitability obligations already in place under the current Suitability Model; and
 - d. making a record of the basis for the recommendation.
3. An enhanced standard of conduct must not:
 - a. require advisors to recommend only the "best" or "cheapest" product;
 - b. prohibit or impair the use of commission-based compensation arrangements or proprietary distribution models;
 - c. favor any particular business model; or
 - d. give rise to fiduciary status for the producer.
4. The enhanced standard should apply only at the time the recommendation is made; compliance with the enhanced standard should not be assessed in hindsight.
5. Producers should be required to provide disclosure to their clients about the sources and types of compensation payable to the producer, and how the producer's compensation may vary among available products.
6. All compensation – cash and non-cash – should be subject to a single set of rules (no need to distinguish).
7. Employee benefits should be excluded from the rules governing compensation.
8. Compensation disclosure should be accompanied by disclosure of:
 - a. the features and benefits of the products being recommended (already included in the Suitability Model);

- b. the nature, scope and limitations of the services being provided by the producer; and
 - c. any ownership interest the producer may have in the insurer whose product is being recommended.
9. The Suitability Model should not impose a reasonable compensation requirement or other restrictions or limitations on compensation types or levels.
 10. The Suitability Model should not require detailed compensation disclosure calling for specific dollar amounts or percentages.