



January 22, 2018

SUBMITTED ELECTRONICALLY: jmatthew@naic.org

NAIC Annuity Suitability (A) Working Group
c/o Jolie H. Matthews
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Contact: Kim O'Brien
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RE: Proposed "Best Interest" Revisions to NAIC Annuity Suitability Regulation

Dear Working Group Members:

The Fixed Annuity Consumer Choice Campaign (FACC)* was organized to address certain issues impacting fixed annuities in connection with Department Labor (DOL) fiduciary rule. While generally FACC focuses its attention on DOL rule deliberations, we have reviewed the NAIC proposal to incorporate concepts of "best interest" into the NAIC's model suitability regulation, and wish to comment on one particular point that may not otherwise be addressed by trade associations representing the industry.

While we have a number of concerns about the NAIC best interest proposal, this letter is to urge the NAIC to give consideration to its overall approach to the concept of "best interest". Specifically, it is our belief the suitability regulation is working and need not be disturbed to address "best interest" concerns which could be better addressed through a separate regulation.

* The FACC Campaign is an unincorporated alliance of insurance agents, independent marketing organizations, insurers, and industry advocates seeking to protect the availability of fixed annuities by ensuring all fixed annuity products are included in Prohibited Transaction Exemption 84-24 or an equivalent exemption under the DOL fiduciary rule that is compatible with the independent agent distribution system.



Insurance companies and agents have spent years developing appropriate systems and protocols to comply with suitability. We propose the NAIC minimize any changes to the suitability regulation to avoid disruption, confusion, and costly administrative overhauls.

It is widely understood that “best interest” (an outgrowth of fiduciary duty) consists of two components - prudence and loyalty. Suitability largely addresses the prudence component of best interest by requiring that any insurance agent (or company) selling any annuity determine there are reasonable grounds to believe the annuity is appropriate for the consumer based on the consumer’s disclosed insurance needs and financial objectives.

Loyalty is the other component of best interest which is aimed at ensuring an agent’s recommendation of any product is motivated by the consumer’s needs and objectives rather than solely the agent’s own self-interest or pecuniary gain. These loyalty issues are purely a function of the compensation paid to and received by the agent, including both cash and noncash compensation, that might influence the agent’s recommendations or color the agent’s decision-making for a consumer.

We urge the NAIC to consider developing a model regulation to address cash and noncash compensation issues separate and apart from the existing suitability regulation. We believe the suitability regulation should stand on its own and should not be diluted or encumbered with other kinds of requirements (e.g., best interest, conflict of interest, compensation, non-cash compensation). We believe the compensation issues implicated by “best interest” are distinct and better handled through a freestanding regulation that more directly addresses the need for proper disclosure of agent compensation and establishing appropriate standards and protocols addressing any potential conflicts of interest (e.g., non-cash compensation) without upsetting existing suitability regulations.

We submit that compensation related issues are particularly sensitive and deserve careful consideration beyond what is contained in the model proposal. Cash and noncash compensation issues are addressed in detail by FINRA and other regulatory bodies. The time possibly has come for NAIC to do something similar so standards and protocols are established for the life insurance industry. Such a regulation, for example, could address issues of proper disclosure as well as exceptions for certain kinds of noncash compensation such as de minimus gifts, occasional meals



and entertainment that do not influence product recommendations, and covering expenses for *bona fide* training events. Given the complexity and seriousness of these matters, such issues would best be addressed in a separate regulation.

In closing, we appreciate inertia may favor continuing on the track of engrafting “best interest” onto the suitability regulation. However, our impression is that the NAIC deliberations are still in their early phases, and we would urge NAIC to step back and consider carefully whether the preferable approach would be to create a separate regulation addressing compensation issues as described above.

Your consideration of these views is much appreciated. Should you have any questions, please feel free to contact me or my FACC colleague and co-founder, Kim O’Brien, at the numbers or emails indicated above

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight Carter". The signature is fluid and cursive.

Dwight Carter
Chairman, FACC Campaign