



**VIA ELECTRONIC MAIL TO JMATTHEWS@NAIC.ORG**

January 22, 2018

Jolie Matthews  
National Association of Insurance Commissioners  
444 North Capitol St. NW  
Washington, DC 20001

Re: Proposed Revisions to the Suitability in Annuity Transactions Model Regulation

Dear Members of the NAIC Annuity Suitability Working Group:

On December 3, 2017, the National Association of Insurance Commissioners (NAIC) published its request for public comment on proposed recommendations to suitability in annuity transactions model regulation that would incorporate a best interest standard with respect to insurers offering advice to consumers involving annuity products (NAIC Proposal).<sup>1</sup> NAIC's purpose in proposing this change is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that are suitable, in their best interest and 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.

The Financial Services Institute<sup>2</sup> (FSI) appreciates the opportunity to comment on this important NAIC Proposal. While FSI's members' main business involves securities, the comprehensive nature of the services they provide to investors often includes the recommendation and sale of annuities. Additionally, some FSI members are broker-dealers owned and operated by insurance companies. As such, FSI offers general comments below but largely defers to and supports the more specific comments made by the Insured Retirement Institute (IRI).

### **Background on FSI Members**

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.<sup>3</sup> These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

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<sup>1</sup> Notice of proposed rules, available at, [http://www.naic.org/meetings1712/cnte\\_a\\_aswg\\_2017\\_fall\\_nm\\_materials.pdf?1513099976140](http://www.naic.org/meetings1712/cnte_a_aswg_2017_fall_nm_materials.pdf?1513099976140)

<sup>2</sup> The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

<sup>3</sup> The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

## **Discussion**

FSI appreciates the opportunity to comment on the NAIC Proposal. We believe the NAIC Proposal to include a best interest standard in the suitability model will cause potential unintended consequences for insurers and investors. These concerns are discussed in greater detail below.

### **I. Uniform Best Interest Standard**

We believe that regulations should be built upon a uniform best interest standard that reflects input from the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA) the Department of Labor (DOL), and the North American Securities Administrators Association (NASAA). While this will take some time, we believe it will result in a uniform standard that achieves its objective while minimizing investor and industry confusion. The standard of care we support is designed to address the same investor protection goals motivating NAIC, but goes a step further by making this the standard for advice for all financial advisers regarding all investment products, not just annuity products. Therefore, now that the NAIC is also exploring a standard of care for insurance products, FSI suggests the NAIC join discussions with the SEC, FINRA, the DOL, and NASAA to assist in developing single standard of Care. Under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC was specifically charged with evaluating how the current standards of care affect the ability of financial advisors to provide personalized investment advice about securities to retail customers, and identify any areas of potential improvement in these standards.<sup>4</sup> Congress expressly stated that any such uniform standard should be reflective of the varied business models and regulatory regimes imposed on each of these entities.<sup>5</sup>

The NAIC Proposal could establish a barrier to a uniform fiduciary standard of care that could apply to all investment advice professionals for all retail accounts. We suggest an alternative standard of care proposed collaboratively by the SEC, FINRA, the DOL, and NASAA

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dual registrant. The use of the term “investment adviser” or “adviser” in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

<sup>4</sup> See Dodd-Frank Act § 913(c).

<sup>5</sup> See Dodd-Frank Act § 913(f) (requiring consideration in rulemaking of findings, conclusions, and recommendations of the study required by Dodd-Frank Act § 913(b)); see also Letter from Congressman Barney Frank, U.S. House of Representatives, to Mary L. Shapiro, Chairman, U.S. Securities and Exchange Commission (May 31, 2011), available at <http://www.thinkadvisor.com/advisorone/files/ckeditor/Barney%20Frank%20Letter.pdf>.

that would unequivocally require financial advisors (including insurers) to act in the best interest of their clients while preserving the investor protections provided by the existing broker-dealer and investment adviser regulatory framework. FSI believes that a uniform best interest standard is critical to the protection of retirement plan assets and the stability of the financial markets.

FSI is concerned that if the states each formulate and/or interpret their own definition of a best interest standard, this will create an unworkable patchwork of varying requirements, ultimately creating confusion and uncertainty not only amongst firms and insurers but among their clients as well. To the extent the NAIC is unable or unwilling to work with the SEC and FINRA on a uniform standard of care, FSI urges the NAIC to reduce this uncertainty by including in the NAIC Proposal a provision stating that registered insurers and insurance producers and their associated persons who follow the rules and standards of their primary regulator (in FSI members' case, this would be FINRA) will be deemed to be in compliance with the NAIC Proposal.

## II. Support for Comments Submitted by the Insured Retirement Institute

As mentioned above, FSI largely defers to and supports the comments made on the NAIC Proposal by the Insured Retirement Institute.<sup>6</sup> We call particular attention to the Executive Summary of the letter which provides an overview of the comments and recommendations made by IRI. FSI is in full agreement with IRI on their comments and recommendations.

### Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with NAIC on this and other important regulatory efforts

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,



Robin Traxler, Esq.  
Vice President, Regulatory Affairs & Associate General Counsel

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<sup>6</sup> Letter dated January 22, 2018 from IRI and signed by Catherine J. Weatherford, President & CEO, Insured Retirement Institute to The Honorable Dean Cameron, Director, Idaho Department of Insurance and The Honorable Doug Ommen, Commissioner, Iowa Insurance Division.