

SUBMITTED ELECTRONICALLY: jmatthews@naic.org

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NAIC Annuity Suitability Working Group
c/o Jolie H. Matthews
Senior Health and Life Policy Counsel
National Association of Insurance Commissioners (NAIC)
Hall of the States Building, Suite 700
444 North Capitol Street, NW
Washington, D.C. 20001-1512

RE: Response to Request for Comment: Revisions to the NAIC Model Rule #275,
Suitability in Annuity Transactions

Dear Members of the NAIC Annuity Suitability Working Group:

NAFA, the National Association for Fixed Annuities,¹ submits this letter in response to the NAIC Annuity Suitability Working Group's (the Working Group) request for comments and suggested revisions to the NAIC Suitability in Annuity Transactions Model Regulation (MDL #275) that would establish a best interest/consumer-focused approach and/or process for the sale of annuity products.

NAFA appreciates the opportunities we have had to meet with members of the Working Group, and we look forward to our continued engagement in this process. We would also mention that NAFA has been very active in working with other insurance trade associations and organizations over the past several months in working together to reach consensus on some of the relevant issues related to a revised suitability model. We made good progress and found numerous areas of real agreement; we look forward to continuing our work with our trade group partners.

In this letter we will briefly outline the principle approach that we believe should guide the Working Group as it continues to work on the revisions to MDL #275.

¹ NAFA, the National Association for Fixed Annuities, is the premier trade association exclusively dedicated to fixed annuities. Our mission is to promote the awareness and understanding of fixed annuities. We educate annuity salespeople, regulators, legislators, journalists, and industry personnel about the value of fixed annuities and their benefits to consumers. NAFA's membership represents every aspect of the fixed annuity marketplace covering 85% of fixed annuities sold by independent agents, advisors and brokers. NAFA was founded in 1998. For more information, visit www.nafa.com.

As we stated in our comment letter² submitted on January 22, 2018, the regulatory framework provided by the current NAIC suitability standards, which have been universally adopted by insurance carriers and are effectively regulated by state departments of insurance, is working.³ We were, in fact, encouraged by the Working Group’s decision in this latest request for comment to consider the current MDL #275 as the starting point for commentary and suggested revisions, rather than use the exposure draft that the Working Group released late last year. This signaled to us a recognition that the Working Group wished to truly focus on “fixing what needs fixing” with the current standard, rather than creating a new, amorphous standard for annuity transactions that may end up favoring one type of annuity distribution channel or one type of product over another – and one which may inadvertently limit consumer choice and access to annuity products that are essential for retirement security.

Much has changed since the NAIC first organized this Working Group in 2017. At that time, stakeholders in both the insurance and securities industries were operating under the assumption that we were living in a post-Department of Labor fiduciary rule world. And, the outcome of efforts by the Securities and Exchange Commission to develop a uniform standard of conduct for broker-dealers and investment advisors, as mandated under Dodd-Frank in 2010,⁴ was as yet unknown.

However, last month the U.S. Court of Appeals for the Fifth Circuit issued a decision to vacate the fiduciary rule in its entirety. And, just last week the SEC released its proposed tri-part, nearly 1000-page regulation to establish a new best interest standard of conduct for broker-dealers; to require new disclosure requirements for both broker-dealers and investment advisors; and to clarify the standard of conduct required of investment advisors. The paradigm within which the Working Group has been operating over the past year has shifted dramatically.

While we understand that there is a desire to revise the standard of conduct required of insurance professionals in annuity transactions so that they harmonize with the standards required of investment advisors and broker-dealers, it is unclear what the SEC proposed package of regulations will end up looking like in its final form. Even the Commissioners who support its release raised a great number of concerns with the proposal and are, in fact, looking to public commenters to help bring clarity and precision to the rule. We are in the very early days of a 90-day comment period for the voluminous SEC proposal, which will take time to review,

² https://nafa.com/wp/wp-content/uploads/2018/01/2018_0122_NAFA-Comment-Proposed-Revisions-to-the-NAIC-Suitability-in-Annuity-Transactions-Model-Regulation-275.pdf.

³ For instance, prior to the NAIC’s adoption of the 2010 version of the suitability model rule, fixed indexed annuity complaints were approximately one complaint per \$150 million of premium; in 2017 that rate was one per \$550 million – down by nearly three-quarters.³ Measured against total premium, the percentage of fixed indexed annuity owners prior to 2010 who did not make a complaint was 99.7%; today, since industry adopted the more robust suitability culture in 2010, that figure is 99.92%.³ According to data released by the NAIC for 2016, there were 148 complaints related to indexed annuities; for 2017, the NAIC reports that number at just 97³ – a 34% year-over-year decrease. *Index Compendium*, Vol. 21, No. 4, April 2017, available at <https://nafa.com/wp/wp-content/uploads/2018/01/IC0417.pdf>.

⁴ Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203, Section 913), http://www.dodd-frank-act.us/Dodd_Frank_Act_Text_Section_913.html.

understand, and react to. It remains to be seen how and just how much this proposal will change. As such, we believe efforts to harmonize a revised best interest or consumer-focused MDL #275 with the SEC proposal is premature.

Yet even if we had greater clarity regarding the SEC proposal, harmonization of SEC investment adviser and broker-dealer regulations with insurance producer regulations should be approached with caution: harmonization should not mean uniformity. There is a significant difference between state regulation of fixed insurance products and state and federal regulation of securities products, just as there are significant differences between the availability for dispute resolution through arbitration for security transactions as opposed to insurance transactions. To the extent that the Working Group seeks to harmonize the standard of conduct applicable to insurance professionals with those that would apply to investment advisors and broker-dealers under a new SEC rule, revisions to MDL #275 must ensure that this model regulation remains insurance focused.

NAFA is not suggesting in any way that the Working Group stop its work on its 2018 charge to (1) review and revise, as necessary, MDL #275; and (2) consider how to promote greater uniformity across NAIC member jurisdiction. We do, however, note that such revisions be truly *necessary* to improving or enhancing the current model rule. State Departments of Insurance are the prudential regulators for insurance, and we commend the NAIC for its ongoing leadership in creating – and, at relevant times, revising – a body of model rules that States rely upon in developing their own regulatory framework for governing the insurance marketplace, including of course MDL #275.

Ultimately, NAFA believes that the current suitability model can be revised to better provide consumers with the meaningful information they need in order to make a decision regarding the purchase of an annuity. In other words, what kind of information is not currently mandatory under the current MDL #275 that an insurance producer should be required to disclose prior to or concurrent with the recommendation of a particular annuity that would help a consumer make a more informed decision?

To that end, NAFA believes that a revised suitability model should require producers to disclose to the consumer the scope of services being provided by the producer and the scope of the producer's licenses; any limitations on the products a producer may recommend or the services the producer may provide; any material conflicts of interest (such as ownership interest the producer may have in the insurer issuing the annuity contract); the sources and types of compensation the producer will or may receive as a result of the recommended transaction; and the basis for the producer's recommendation. NAFA believes that making these meaningful disclosures to consumers will genuinely enhance the annuity transaction process, resulting in better consumer experience and outcome. Additionally, a more robust, but tangible, disclosure

regime will promote clear guidelines for insurance professionals that will lead to more consistent and predictable results.

We appreciate having had the opportunity to discuss our concerns and suggestions in meetings with some of you over the past several months, and we look forward to continuing to work together with the NAIC Working Group as you move through the revision process. We, of course, hope to reserve our opportunity to provide additional comments.

On behalf of NAFA's members, again thank you for opportunity to submit these comments. Please do not hesitate to contact me if you would require any additional information.

Sincerely,



Charles "Chip" Anderson
NAFA Executive Director