

# The Investment Lawyer

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## REGULATORY MONITOR

### Life Insurance and Annuity Developments

By Ann B. Furman

**R**ecent life insurance and annuity developments include:

- Variable insurance product issues addressed in the 2021 industry comment letter from the Chief Accountant of the Division of Investment Management (IM) of the Securities and Exchange Commission (SEC);
- National Association of Insurance Commissioners (NAIC) Life Insurance and Annuity (A) Committee (A Committee) FAQs relating to 2020 revisions to the NAIC *Suitability in Annuity Transactions Model Regulation* (#275) (Suitability Model); and
- NAIC Index-Linked Variable Annuity (A) Subgroup to study and recommend changes to interim value requirements.

#### IM Chief Accountant Guidance

In its 2021 industry comment letter, the Staff of the IM Chief Accountant's Office directs the chief financial officer of registrants and other relevant parties (Dear CFO Letter) to help registrants, including issuers of insurance product securities, and their independent public accountants to address certain accounting, auditing, financial reporting, and other disclosure matters. The letter addresses two matters relevant to issuers of insurance products.

First, the 2021 Dear CFO Letter announces a position (2021-01) regarding certain historical financial statement information to be included in a registration statement on Forms N-3, N-4, N-6, or S-1 for an insurance product where the insurer is transitioning from providing financial statements prepared under accounting principles generally accepted in the United States (US GAAP) to those prepared under statutory accounting principles (STAT).

In particular, 2021-01 reminds registrants about

- periods presented (depositors must comply with Article 3 of Regulation S-X, which requires historical information for two years of balance sheets and three years of income statements, statements of changes, and statements of cash flows), and
- historical presentation (historical information should be presented on a consistent basis, which is on a STAT basis).

Second, the Dear CFO Letter addresses EDGAR filing of financial data schedules by registrants who file on Forms N-4 (for separate accounts offering variable annuity contracts) and Form S-6, now N-6 (for separate accounts offering variable life insurance policies). Since financial data schedules have been removed from the EDGAR filing manual, registrants

on Forms N-4 and N-6 are no longer required to file them.

## NAIC Suitability Model FAQs

At the NAIC's 2021 summer national meeting in August, the Executive (EX) Committee approved a frequently asked questions (FAQ) guidance document regarding 2020 revisions to the 2010 Suitability Model. The 2020 revisions include a best interest standard of conduct for insurers and producers, an expanded safe harbor, and revised training requirements.

With regard to the regulation of fixed and fixed indexed annuities as insurance products and not securities products, the Harkin amendment, Section 989J of the Dodd-Frank Act, specifically refers to the 2010 Suitability Model. FAQ 2 asks how the Harkin amendment applies to the 2020 Suitability Model.

After analyzing the text of the Harkin Amendment, the answer to FAQ 2 concludes that "The NAIC considers the 2020 version to be a successor modification to the model that exceeds the requirements of the 2010 version." With regard to the Harkin amendment's five-year adoption requirement, FAQ 2 further notes as follows:

As such, states need to work toward adopting the 2020 version within 5 years after its adoption by the full NAIC membership in February 2020, which, in this case, would require state adoption of the 2020 version by February 2025, to maintain the status of fixed and fixed indexed annuities meeting the requirements of Section 989J as outside the scope of federal securities regulation.

Three FAQs relate to material conflicts of interest. Ten FAQs relate to new producer training requirements.

FAQ 15 notes that the 2020 Suitability Model requires that all producers complete

a one-time training course that covers general annuity principles—including the types and uses of annuities, how annuity contract features affect consumers, and tax implications—as well as information about the new standard of conduct and the other requirements of the revised model. The specific training required depends on what prior training the producer has completed.

The insurance industry had commented on how producers' prior training would be considered. Instead of a new four-credit course, producers who received training under the 2010 Suitability Model have the option of completing a one-credit training course that focuses on the new sales practices, replacements, and disclosure requirements of the 2020 Suitability Model.

FAQ 17 confirms that training requirements under the 2020 Suitability Model are in addition to, and not in lieu of, FINRA training requirements for producers who are associated persons of a broker-dealer.

The FAQ guidance document, which the NAIC Suitability Working Group approved in July and the Executive Committee approved in August, is not the final product. The Suitability Working Group intends to resume work on the FAQ guidance document to add additional questions related to the 2020 Suitability Model's safe harbor provision. As of August 3, 2021, 15 states have adopted the 2020 revisions to the Suitability Model, and proposals in five more states are pending state action.

## NAIC Index-Linked Variable Annuity (A) Subgroup

Registered index-linked annuities (RILAs) and Index-Linked Variable Annuities (ILVAs) are filed for approval with state insurance departments as "variable annuities." RILAs and ILVAs are not filed for approval with the Interstate Insurance Product Regulation Commission (IIPRC), because the

IIPRC has not developed standards for reviewing these products.

Although filed as variable annuities, RILAs and ILVAs differ from variable annuities as defined in the NAIC *Variable Annuity Model Regulation* (Model 250). Instead of providing annuity benefits that vary according to the investment experience of a separate account maintained by an insurer, RILAs and ILVAs provide annuity benefits based, in part, on the performance of an underlying index or indices and are funded through a non-unitized separate account.

Nonforfeiture requirements and minimum values set forth in the *Standard Nonforfeiture Law for Individual Deferred Annuities* (Model 805-1) do not apply to variable annuities or to RILAs and ILVAs filed as variable annuities.

The NAIC Life Actuarial (A) Task Force (LATF) has been studying nonforfeiture and interim value requirements for RILAs and ILVAs. The NAIC A Committee appointed the Registered Index-Linked Variable Annuity (A) Subgroup in August to study and recommend changes, as

appropriate, to nonforfeiture and interim value requirements for RILAs and ILVAs. The new subgroup has agreed to draft an options document. Among others, options for addressing these requirements range from doing nothing and allowing the IIPRC to develop standards for RILAs and ILVAs, amending the definition of “variable annuity” set forth in Model 250, providing actuarial guidance, developing a draft standard for minimum interim values, and exempting RILAs and ILVAs from nonforfeiture requirements. At a Subgroup meeting held on September 23, the chair announced that he was going to work on an actuarial guideline for consideration by the rest of the Subgroup. The subgroup intends to seek comment from the insurance industry, regulators, and consumer representatives after the draft options document is complete.

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