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## REGULATORY MONITOR

### LIFE INSURANCE AND ANNUITY DEVELOPMENTS

By Ann B. Furman

#### NAIC Annuity Suitability Working Group

**R**ecent life insurance and annuity developments include progress on annuity suitability guidance from the National Association of Insurance Commissioners (NAIC) Suitability Working Group; website posting guidance from the Securities and Exchange Commission (SEC) Division of Investment Management; and considerations for whether the SEC under new leadership will adopt rules establishing electronic delivery as the default method of delivery of regulatory documents.

#### Background

In 2010 the NAIC adopted the *Suitability in Annuity Transactions Model Regulation* (Model #275). In 2020, the NAIC adopted revisions to Model #275 to incorporate a best interest standard of care for consistency with SEC Regulation Best Interest (Reg BI). As adopted in 2020, Model #275 also includes a revised safe harbor for producers who comply with Reg BI, Financial Industry Regulatory Authority (FINRA) suitability rules, fiduciary duty under the Investment Advisers Act of 1940 (Advisers Act), or “comparable standard” of care. As of February 1, 2025, 48 states had adopted the 2020 revisions to Model #275 either as is or with some modifications.

The NAIC Annuity Suitability Working Group drafted and adopted frequently asked questions (FAQs) that provide guidance to states regarding the 2020 revised model. In addition, since 2022, the Working Group has been drafting and revising a safe harbor guidance document, called the “Chair Draft,” addressing the comparable standard component of the safe harbor. The comparable standard component can enable a producer licensed under another applicable federal or state law to rely on the safe harbor in making a recommendation or executing an annuity transaction. Public comment on the latest Chair Draft ended on November 8, 2024. The Working Group plans to review comments received and revise the draft accordingly. Thereafter, the Working Group will distribute the draft guidance document for public comment and hold a future meeting to discuss it.

At a recent NAIC national meeting, a former NAIC-funded consumer representative expressed concern about the lack of progress of the Working Group on the draft safe harbor guidance document. He noted that the NAIC’s Market Conduct Examination Guidelines (D) Working Group has been attempting to develop exam guidance related to the updated Model #275, but that effort has been “stymied by the lack of clarity regarding the safe harbor provision from the Annuity Suitability Working Group.”<sup>1</sup> In response, Iowa Insurance Commissioner

Doug Ommen, Chair of the Annuity Suitability Working Group, stated that he anticipates that States will at some point have best practices with respect to the safe harbor to ensure that there is consistency and uniformity in the marketplace.<sup>2</sup>

### Website Posting Requirements

The SEC's Division of Investment Management has issued Accounting and Disclosure Information (ADI) 2025-15,<sup>3</sup> which addresses electronic communications, particularly website posting requirements under applicable Investment Company Act of 1940 (1940 Act) rules and exemptive orders. ADI 2025-15 summarizes website posting requirements under the summary prospectus rules for open-end funds and variable insurance products as well as website posting requirements under rules governing exchange traded funds (ETFs) and money market funds (MMFs).

Prior to the issuance of ADI 2025-15, the SEC Staff had observed "several issues" relating to the website posting requirements under 1940 Act rules and exemptive orders. With respect to summary prospectus requirements, those observations pertained to the website address at which online documents are available, linking of table of contents, and linking between summary prospectus and statutory prospectus/SAI.

The summary prospectus rules require open-end fund and variable insurance product registrants using a summary prospectus to post certain documents online at the website address specified on the cover page of the summary prospectus.

Open-end funds using a summary prospectus are required to post the fund's current summary prospectus, statutory prospectus, statement of additional information (SAI), and most recent annual and semi-annual reports to shareholders.

Insurance companies using a summary prospectus are required to post a variable product's current initial summary prospectus, updating summary prospectus, statutory prospectus, SAI, and, in the case of a managed separate account registered on Form

N-3, the registrant's most recent annual and semi-annual reports to shareholders. Also, if insurance companies avail themselves of the optional method of delivering underlying fund prospectuses, they must post, for each underlying fund, the fund's current summary prospectus, statutory prospectus, SAI, and most recent annual and semi-annual reports to shareholders.

The summary prospectus rules require linking within and between electronic documents posted online. Links must enable the reader to move directly between the table of contents within statutory prospectus and SAI and related sections of the documents. In addition, links must enable the reader to move back and forth between each section of the summary prospectus and any related section of the statutory prospectus and SAI that provides additional detail.

ADI 2025-15 summarizes the additional website posting requirements that apply under the variable product summary prospectus rules, namely those relating to website addresses, the key information table, and definitions of special terms used in the online summary prospectus.

The variable product website address requirement applies to electronic versions of the statutory prospectus and summary prospectus that are sent to investors or available online but not to electronic versions filed on Electronic Data Gathering, Analysis, and Retrieval (EDGAR). If the website address requirement applies, the statutory or summary prospectus in question must incorporate an active hyperlink that leads directly to the relevant website address. The ADI notes that "a number of" variable product registrants "included a continuously visible sidebar with a link to the statutory prospectus or to the table of contents of the statutory prospectus (rather than links to sections of the statutory prospectus)." The ADI admonishes readers that this approach "requires a reader to move through two or more hyperlinks to access the referenced section of the statutory prospectus," whereas the rules require "a direct link to that section."<sup>4</sup>

## **ETFs**

ADI 2025-15 addresses website posting requirements for ETFs that fall within the scope of Rule 6c-11 under the 1940 Act.<sup>5</sup> Among other things, an ETF relying on Rule 6c-11 must disclose on its website: daily holdings; daily market information—current net asset value (NAV), market price, and premium or discount as of the end of the prior business day; historic premium and discount information (table and line graph); 30-day median bid-ask spread (using national best bid and national best offer); and disclosure of ETF premiums and discounts greater than 2 percent (for more than seven consecutive trading days).

## **MMFs**

Money market funds are required to post prominently on their website fund information, including portfolio maturity and holdings; daily disclosure of daily and weekly liquid assets; daily disclosure of current NAV; Form N-MFP information; and Form N-CSR information.

ADI 2025-15's key takeaway: "Review your websites to ensure required disclosures are posted in compliance with any applicable rules and exemptive orders."

## **What's Not Covered**

ADI 2025-15 does not address all open-end fund or insurance product website posting requirements. For example, website posting requirements in Form N-4 applicable to registered index-linked annuity (RILA) contracts are not covered. As revised in 2024, Form N-4 Item 6 requires insurance companies to disclose, for each index-linked option, current limits on index losses and gains (along with a statement that the current limit will not change during an index-linked option's crediting period). Form N-4 permits insurance companies to comply with the requirement to provide current limits on index gains by posting the information to a website that is publicly accessible and free of charge and

incorporating by reference information on the website into the prospectus.<sup>6</sup> Posting current limits on index gains on an insurance company's website has the advantage of avoiding the need to file a prospectus supplement when limits change.<sup>7</sup>

Website posting requirements in Forms N-CSR (tailored shareholder reports) and CRS (customer/client relationship summary) also are not addressed in ADI 2025-15. The SEC Staff previously addressed N-CSR common issues, including website posting, in ADI 2024-14.<sup>8</sup> The SEC Staff also addressed shareholder report website availability requirements in FAQs.<sup>9</sup> In addition, the SEC Staff addressed Form CRS website posting requirements in greater detail in FAQs.<sup>10</sup>

## **Electronic Delivery of Required SEC Documents**

The financial industry has urged the SEC for years to adopt an "access equals delivery" model to satisfy delivery requirements of required SEC documents. The SEC adopted the "optional internet availability" model in 2018 when it adopted Rule 30e-3 under the 1940 Act by which insurance companies made shareholder reports accessible at a website address specified in a notice to investors.<sup>11</sup> But in 2022, the SEC rescinded Rule 30e-3 for open-end funds registered on Form N-1A.<sup>12</sup> Only closed-end funds registered on Form N-2 and managed separate accounts registered on Form N-3 are now permitted to rely on Rule 30e-3 for optional internet availability of shareholder reports.

The SEC's actions vis-à-vis Rule 30e-3 are perplexing, which is one reason Congress may have considered the "Improving Disclosure for Investors Act of 2023" (H.R. 1807) and the "Improving Disclosure for Investors Act of 2024" (S. 3815). The proposed legislation would require, within one year following enactment, the SEC to "finalize rules, regulations, amendments, or interpretations, as appropriate, to allow a covered entity to satisfy the entity's obligation to deliver regulatory documents required under the

securities laws to investors using electronic delivery.” The proposed legislation also would require the SEC to establish a mechanism for investors to opt out of electronic delivery and receive paper documents instead. If the SEC does not finalize rules within one year after enactment, the proposed legislation would allow for electronic delivery of these documents.<sup>13</sup>

A common argument in opposition to electronic delivery has been that older Americans prefer to receive investment documents in the mail. But, according to a study commissioned by the Securities Industry and Financial Markets Association (SIFMA), that is not the case.<sup>14</sup> To gauge interest in electronic delivery as a delivery method for receiving investor communications SIFMA surveyed 1,300 US individual investors from May 16–19, 2022.<sup>15</sup> A large majority of those surveyed had already elected electronic delivery and *expressed a preference for investor communications to be sent via electronic delivery.*

Legislators introduced the electronic delivery proposals in the 118th Congress (2023-2024). The House bill passed as an amendment to “Expanding Access to Capital” (H.R. 2799) on March 8, 2024, but the Senate bill did not move out of committee. The Republican majority in the 119th Congress (2025-2026) may be more favorably inclined to pass legislation establishing electronic delivery as the default method of delivery. It remains to be seen whether Congress will mandate that the SEC institute electronic delivery or whether the SEC under new leadership will adopt rules that embrace wider electronic delivery without such a mandate.

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## NOTES

- <sup>1</sup> Minutes of the NAIC Life Insurance and Annuities (A) Committee, Aug. 15, 2024, Remarks of Birny Birnbaum (Center for Economic Justice).
- <sup>2</sup> *Id.* (Remarks of Commissioner Doug Ommen).
- <sup>3</sup> *Website Posting Requirements*, ADI 2025-15 (Jan. 16, 2025), available at <https://www.sec.gov/about/divisions-offices/division-investment-management/accounting-disclosure-information/adi-2025-15-website-posting-requirements>.
- <sup>4</sup> *Id.*
- <sup>5</sup> Rule 6c-11 under the 1940 Act applies to ETFs that are registered open-end management investment companies that issue (and redeem) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount (if any) and that issue shares that are listed on a national securities exchange and traded at market-determined prices. An ETF not relying on Rule 6c-11 must obtain and rely on an order granting exemptions that impose various conditions on the ETF, many of which impose posting requirements.
- <sup>6</sup> Form N-4, Item 6(d)(2)(ii)(B) Instructions (1) and (2); *Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments to Form N-4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments*, Securities Act Release No. 11294 (July 1, 2024) at text accompanying note 264, citing to Final Form N-4, Instruction 1 to Item 6(d)(2)(ii)(B), available at <https://www.sec.gov/files/rules/final/2024/33-11294.pdf> [RILA Form Adopting Release].
- <sup>7</sup> The RILA Form Adopting Release states that “the website must: (1) be specific enough to lead investors directly to the current limits on index gains, rather than to the home page or other section of the website on which the limits are posted; (2) reflect current limits that are available for all contract investors, including variations in limits (for example, due to distribution channel, State requirements, optional benefits, date of contract purchase, etc.); and (3) only

include limits on index gains that are currently available for the index-linked options offered.” *Id.*

<sup>8</sup> See *Tailored Shareholder Report Common Issues*, last updated Nov. 8, 2024, available at <https://www.sec.gov/about/divisions-offices/division-investment-management/accounting-disclosure-information/adi-2024-14-tailored-shareholder-report-common-issues>.

<sup>9</sup> See *Tailored Shareholder Reports Frequently Asked Questions*, FAQs 3-5, Form N-CSR Website Availability Requirements, last updated Jan. 6, 2025, available at <https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/tailored-shareholder-reports-frequently-asked-questions>.

<sup>10</sup> See *Frequently Asked Questions on Form CRS*, last updated Dec. 8, 2023, available at <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-form-crs>.

<sup>11</sup> *Optional Internet Availability of Investment Company Shareholder Reports*, Investment Company Act Release No. 33115 (June 5, 2018) (effective Jan. 1, 2019).

<sup>12</sup> *Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements*, Investment Company Act Release No. 34731 at 273 (Oct. 26, 2022) (“Under the rule amendments, affected funds will be required to transmit concise shareholder reports directly to shareholders in order to meet their transmission obligations. Funds will not have the flexibility instead to send a notice with information about the online location of the shareholder report, as is the case under current rule 30e-3.”).

<sup>13</sup> H.R. 1807 § 2(b)(4) & (e). See House Financial Services Committee, Committee Report, H.

Rept. 118-295—Improving Disclosure for Investors Act of 2023 (“Under the bill, such rules would allow registered investment companies (that is, mutual funds, closed-end funds, and exchange-traded funds), business development companies (BDCs), registered broker-dealers, registered advisers, and other SEC-regulated entities to meet their obligations under US securities laws to deliver regulatory documents to investors electronically.”), available at <https://www.congress.gov/congressional-report/118th-congress/house-report/295/1>.

<sup>14</sup> *Most Investors Want Electronic, Not Paper, Delivery of Investor Documents*, fgs global YouGov Survey commissioned by SIFMA (July 2022), available at <https://www.sifma.org/wp-content/uploads/2022/07/SIFMA-Survey-Results-for-SEC-July-2022.pdf>.

<sup>15</sup> Letter from Kenneth E. Bentsen, Jr. (President and CEO, SIFMA) to Gary Gensler (Chair, SEC), July 18, 2022, noting as follows:

In summary, the Survey results clearly show that most investors want e-delivery to be the default mechanism and that many still struggle with receiving e-delivery because of the constraints they face to electing e-delivery, which are largely the result of SEC requirements. Approximately 85% of individual investors are comfortable with making e-delivery the default mechanism so long as there remains an option to opt-in to paper delivery. **The Survey further found that most investors are very comfortable with e-delivery regardless of age, education level, income level, and the amount of assets held. Over two-thirds of investors aged 55-74 were comfortable with e-delivery.** (Emphasis added.)

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