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Expect Focus Life Insurance, March 2018

Another Bout in the NAIC Best Interest Standard Title Fight

FINANCIAL SERVICES REGULATORY | LIFE, ANNUITY, AND RETIREMENT SOLUTIONS | SECURITIES AND DERIVATIVE LITIGATION | MARCH 31, 2018


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In response to the National Association of Insurance Commissioners' (NAIC) Annuity Suitability Working Group's (Suitability WG) proposed revisions to the "*Suitability and Best Interest Standard of Conduct in Annuity Transactions Model Regulation*" (Model), 23 comment letters were submitted by regulators, consumer groups, industry groups, and companies (the Contenders). Several rounds of sparring are likely at the NAIC's Spring National Meeting in March, with the following points of contention:

Scope of Model: The first round will be a no holds barred fight over the appropriate scope of the Model. Regulators and consumer groups argue the Model should also cover life insurance products that are "marketed based on features … virtually indistinguishable from the features of annuities." Industry jabbed back that any regulation needs to recognize life insurance and annuities are fundamentally different. The Contenders will also square-off on the activities to be covered by the Model. Industry only wants the Model to cover recommendations made at the point of sale, not solicitations, negotiations, and other product transactions (such as subsequent deposits) after a product is issued. Regulators and consumer groups counterpunched that the Model's scope is too narrow and should specifically cover recommendations and transactions under in-force policies.

What is Best Interest? In the second round, the Contenders will trade punches over the meaning of "Best Interest." Industry contends Best Interest does not require a recommendation of the: (i) least expensive annuity product, (ii) annuity product with the highest stated interest rate or income payout rate, or (ii) single "best" annuity product available in the marketplace at the time of the transaction. Consumer groups and regulators counterattacked that the Model should require a recommendation be "the best of the available options for the consumer, taking into account costs, performance, liquidity, and other relevant product features, as well as the customer's particular circumstances."

Compensation Disclosure: The Contenders will also shadowbox on producer compensation disclosure. While all the Contenders agree the Model's requirement to disclose cash compensation above 3 percent and non-cash compensation above $100 is arbitrary, they disagree on the required disclosure. Industry asserts non-cash compensation disclosure should "be triggered only when the producer's receipt of the non-cash compensation is related to the producer's recommendation of the particular annuity." Regulators swung back, recommending disclosure of all non-cash compensation regardless of whether it is tied to a sale, including "bonuses, contests, special awards, differential compensation, and other incentives won or received as a result of having sold a threshold dollar amount of annuities."

On March 14, the sparring began during a Suitability WG call. After the call, Iowa Insurance Commissioner Doug Ommen proposed additional revisions to the Model for consideration.

Spectators at the NAIC Spring National Meeting will see the Contenders continue to duke it out to convince the Suitability WG of their positions and steer the development of the Model in their direction.