Comments of the Center for Economic Justice

To the NAIC Market Conduct Examination Guidelines Working Group

Life and Annuity Exam Standards Revisions Related to
2020 Revisions of NAIC Suitability in Annui

The NAIC again revised the Suitability in Annuity Transactions Model Regulation in 2020. This NAIC intends for the revised Model 275 to be a successor regulation that exceeds the requirements of the 2010 model regulation and, consequently, meets the requirements of a successor regulation set out in the Dodd Frank Act.

As of September 2022, over half of the jurisdictions have adopted a version of the 2020 model with little variance from the NAIC model. Examiners should reference their own jurisdiction's version and adjust review standards accordingly.

New Standard – Producer Shall Not Place the Producer's or Insurer's Financial Interest Ahead of the Consumer's Interest.

Model 275 (2020) establishes best interest obligations in Section 6A:

"Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:"

First, the Model 275 (2020) defines producer to include an insurer where no producer is involved. So the above requirement should be understood to mean a producer or an insurer where no producer is involved shall not place the producer's or insurer's financial interest ahead of the consumer's interest.

Second, this financial interest obligation is in

- *identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.[5]*
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1. ***Do all broker-dealers and investment advisers have conflicts of interest?***
   Yes. All broker-dealers, investment advisers, and financial professionals have at least some conflicts of interest with their retail investors. Specifically, they have an economic incentive to recommend products, services, or account types that provide more revenue or other benefits for the firm or its financial professionals, even if such recommendations or advice are not in the best interest of the retail investor.[14] This can create substantial conflicts of interest for both firms and financial professionals. The nature and extent of conflicts will depend on various factors, including a firm's business model. Consistent with their obligation to act in a retail investor's best interest, firms must address conflicts in a way that will prevent the firm or its financial professionals from providing recommendations or advice that places their interests ahead of the interests of the retail investor.

2. ***What are some examples of conflicts of interest for broker-dealers, investment***

   Under both standards, a conflict of interest is an interest that might incline a broker-dealer, investment adviser, or financial professional—consciously or unconsciously—to make a recommendation or render advice that is not disinterested. Examples of common sources of conflicts of interest can include, but are not limited to:

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- *compensation, revenue or other benefits (financial or otherwise) (including, but not limited to, gifts, entertainment, meals, travel, and related benefits, including in connection with the financial professional's attendance at third-party sponsored trainings and conferences) to the financial professionals resulting from other business or personal relationships the financial professional may have, relationships with third parties that may relate to the financial professional's association or affiliation with the firm or with another firm (whether affiliated or unaffiliated), or other relationships within the firm; and*
- *compensation, revenue or other benefits (financial or otherwise) to the firm or its affiliates resulting from the firm's or its financial professionals' sales or offer of proprietary products or services, or products or services of affiliates.*

While the examples above represent some common sources of conflicts of interest, the staff notes that there are other sources of conflicts that firms and their financial professionals may need to consider in light of their specific business models.

In contrast, Model 275(2020) declares cash and non-cash compensation is not a conflict of interest. Consequently, a producer or insurer relying compliance with FINRA or SEC requirements would face a higher standard concerning conflicts of interest.