



September 21, 2009

September 17th, 2009

Via e-mail

The Honorable Kim Shaul
Deputy Commissioner
Office of the Commissioner of Insurance GEF 3, Second Floor
125 South Webster Street
Madison, Wisconsin 53702

NAFA, the National Association for Fixed Annuities, continues to be grateful for the ongoing opportunity to submit comments to the Working Group. As you know, NAFA is the exclusive trade association dedicated to promoting the awareness and understanding of fixed annuities and the association's members represent the overwhelming majority of independent insurance agents who write fixed indexed, declared-rate and income annuities.

NAFA continues to support the Working Group's objective to protect consumers considering annuity purchases by requiring suitable sales and producer education. And, while the latest draft is much improved over earlier drafts and wisely reflects suggestions made by this association and many of our trade partners, NAFA remains concerned with some aspects of the draft. In short, NAFA's main objections to the draft model are:

- 1). the existing model is working in some 40-plus and there has been no evidence produced to the contrary;
- 2). the implementation of a brand new model would undermine the progress made and harm consumers by creating disharmony and lack of uniformity between states; and,
- 3). the definitions, supervisory and training sections are incompatible with the fixed annuity distribution system.

But most importantly Rule 2821, while a commendable principles-based model for suitability in securities sales, does not address the unique differences of insurance and its guaranteed elements which are necessary for fixed annuity suitability review. NAFA believes it would be wise to edit or change the language to reflect the insurance application and the independent distribution.

Below are comments and suggested improvements to specific sections of the revised draft.

Section 5. Definitions

NAFA is concerned with the qualified staff definition and the requirement that the staff member must be "[i]ndependent from insurance producers whose recommendations are the subject of the function and independent from the sales managers of the insurance producers." It is important to note that FINRA does not have this requirement. NAFA recommends that this requirement is eliminated.

The current draft still reflects the consumer information list that is a replication of the FINRA 2821 list without modification to the insurance marketplace. NAFA member companies already require producers to review suitability information that follows the essence of Rule 2821's list and have incorporated into the list their suitability forms **with one major change** – they have included ***relevant and enlightening insurance information***.

NAFA member companies have spent many human and financial resources to train producers not to use the term “investment” when discussing a fixed annuity because fixed annuities are insurance products that provide guarantees to consumers and the investment community and regulators have appropriated the term for exclusive use to describe risky products (securities). To use the term investment muddies the significant differences between securities and insurance and will likely create misunderstandings and/or incorrect expectations by consumers.

Specifically, NAFA believes that asking the consumer's investment time horizon, investment objectives and investment experience does not provide the appropriate information in the suitability review when discussing a fixed annuity. Instead a suitability review for a fixed annuity should include ***financial*** objectives to uncover things like the consumers objectives for retirement income, asset protection, legacy giving to heirs or charities, etc. A question of ***financial*** experience might uncover their experience with budgeting money for emergency expenditures, loss of job, investments, insurance protection, savings, etc. Conversely, a question of ***investment objective*** might only uncover the need to obtain a 7% annual growth rate in their mutual fund. Investment objectives and experience would be limited to securities, while the term “financial” requests a much broader perspective of the customer's situation, needs, and experience or at least one which includes guaranteed products.

Furthermore, NAFA objects to the request for the source of funding for the annuity. The language appears to ignore the real problems of a licensed producer who is selling fixed annuities and may or may not be licensed to sell mutual funds, variable annuities, stocks (or for that matter long term care, health insurance, real estate, etc.) It is imperative that non-securities licensed insurance producers do not cross the line and give investment or securities advice (or health/long term care advice) without the proper license and supervision in an attempt of determining suitability of the fixed annuity. Discussion of the premium amount and the financial needs of the client, along with the remaining customer information are sufficient for a thorough suitability review. Analyzing or discussing the ***source*** of the premium could have the unintended consequences of leading a conscientious non-securities licensed agent to give investment advice when they are not educated, licensed, or authorized to do so.

Section 6. **Duties of Insurers and Insurance Producers to Recommend Suitable Sales**

NAFA questions the need for 6. A. 3. when there is an exemption for FINRA supervised sales. It appears this section is not necessary with that exemption.

NAFA objects to the imposition of a strict liability on insurers to ensure each sale is suitable. Even the FINRA standards do not apply this strict liability but rather imposes standards which state that sales *shall not be*

unsuitable. It is not possible to eliminate unsuitable sales by regulation. Some unsuitable sales will occur even when insurers follow the very letter of the Model Regulation because suitability is not an exact mathematical equation. Imposing a standard of liability on insurers that is not feasible can only result in violation of the law each time a sale is determined to be unsuitable. Additionally, the draft states that the penalty for a violation “shall only be reduced or eliminated if the violation is not a part of a pattern or practice,” which, without definition or context, is substantially vague and provides the insurer with little to no defense against a charge of violation. The insurer’s responsibility to put the consumer whole when a sale is determined to have been unsuitable is the appropriate standard, not one of strict liability.

Lastly, NAFA and its members have learned from experience that exchanges are not in and of themselves suggestive of unsuitable sales and the acceptable rates of exchange vary from individual to individual and sale to sale and cannot be hard-coded into a systemic formula. Further, the individual consumer information obtained and the reasonable grounds of the insurance producer, or insurer where no producer is involved, to believe that the recommendation is suitable under the reasonable basis conditions listed in Section 6.A. 1-4 will be the basis for determining the suitability of the exchange and not some arbitrary rate of exchange. NAFA requests removal of this paragraph.

Section 7. Insurance Producer Training

NAFA agrees that all producers need and should receive training on suitability requirements, disclosure and annuity product features. The association also believes this section is overly prescriptive and respectfully reminds the Working Group that FINRA does not have this requirement.

However, assuming the inclusion of the provision, NAFA objects specifically to the requirement that a producer “shall not sell” a fixed annuity unless the insurance producer has completed training on the material features of the annuity on the grounds that it is paradoxically overly broad and too prescriptive. It is overly broad in that the draft does not specify what it means by “training.” It is too prescriptive in that the draft language suggests that this training must occur before each and every sale of the annuity product or between lapses of time between sales. NAFA recommends the following language:

An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the material features of the annuity to the extent reasonably necessary to make the recommendation.

Furthermore, the insurer must develop and make available product-specific training materials or programs reasonably designed to enable producers who recommend the insurer’s annuity product to understand the product’s material features.

The requirement that the insurer “satisfy its responsibility to require an insurance producer to comply with paragraph (1) by obtaining certificates of completion...” is duplicative, overly burdensome, and unnecessary. Rather, the education requirement of paragraph (1) should be made **as part of** the licensing or continuing education requirements of the states. In doing so, the insurer may satisfactorily rely on the licensing status of the producer to ensure compliance.



September 21, 2009

NAFA is unclear as to which draft the Working Group will be discussing at the meeting next week. It would be beneficial to all interested parties to be informed which draft version (9/4/2009 or the 7/2/2009) will be discussed in order to prepare appropriately for the meeting. NAFA is willing and ready to assist in working toward finalizing the Working Group's recommendation and we look forward to seeing you in Washington next week. Please contact me for any clarification and/or more information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kim O'Brien", is written over a circular stamp or watermark.

Kim O'Brien
Executive Director

Cc: All members of the Suitability of Annuity Sales (A) Working Group
All members of the Life Insurance and Annuities (A) Committee