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November 27, 2019

Mr. Mike Yanacheak
Chair, Annuity Disclosure (A) Working Group
National Association of Insurance Commissioners

Re: 11-13-19 Draft of Proposed Revisions to the NAIC Annuity Disclosure Model Regulation (#245)

Dear Mr. Yanacheak:

These comments are submitted on behalf of the American Council of Life Insurers (ACLI)[1] in response to the 11-13-19 draft of proposed revisions to the NAIC Annuity Disclosure Model Regulation (Model Regulation), relating to illustrations for fixed indexed annuities, recently exposed by the NAIC Annuity Disclosure Working Group (Working Group).

ACLI appreciates the Working Group's continuing efforts to modify the Model Regulation to allow illustrations for fixed indexed annuities that will reflect innovations in the marketplace and enhance consumers' understanding of annuities they are contemplating purchasing. ACLI thanks the Working Group for its consideration of our views relating to previous drafts of proposed revisions and the opportunity to submit comments on this latest (11-13-19) draft of proposed revisions to the Model Regulation. Though ACLI supports the Working Group's efforts, ACLI remains concerned about several of the revisions proposed in the 11-13-19 draft.

<u>Section 6.F.(9)(b)(i)</u>

In the comments submitted to the Working Group by ACLI and the Indexed Annuity Leadership Council (IALC) on October 9, 2019, ACLI and IALC suggested that Section 6.F.(9)(b)(i) might be strengthened by adding a requirement that indices and financial instruments that underlie an index each have "its own verifiable published performance history"(in addition to having been in existence at least 15 years).

[1]The American Council of Life Insurers (ACLI) advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers' financial and retirement security. 90 million American families depend on our members for life insurance, annuities, retirement plans, long-term care insurance, disability income insurance reinsurance, dental and vision and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers' products for peace of mind. ACLI members represent 95 percent of industry assets in the United States. Learn more at www.acli.com.

(Another copy of the 10/9/19 joint ACLI/IALC letter is attached.) ACLI appreciates the Working Group's efforts to strengthen this provision, albeit through use of a different approach. That said, ACLI is concerned that the proposed new language may unintentionally be construed to suggest that: (i) commodities, interest rates, and exchange traded funds are (or must be part of) indices to meet the criteria in this provision; and/or (ii) the list of financial instruments is intended to be an exclusive list.

To address these concerns, ACLI urges clarification to the language of Section 6.F.(9)(b)(i) in the 11-13-19 draft to read as follows:

> (i) The index is a combination that includes, but is not limited to, ~~of~~ indices, ~~including~~ stocks, bonds, futures, commodities, interest rates, or exchange traded funds, each of which has been in existence for at least fifteen (15) years;

In the alternative, ACLI suggests clarification to the language of Section 6.F.(9)(b)(i) in the 11-13-19 draft to read as follows

> (i) The index is a combination of indices, ~~including~~ stocks, bonds, futures, commodities, interest rates, or exchange traded funds, each of which has been in existence for at least fifteen (15) years;

Section 6.F.(9)(b)(iii)

Consistent with the 10/9/19 ACLI/IALC letter, ACLI continues to have serious concern with the language of Section 6.F.(9)(b)(iii) in the 11-13-19 draft, that provides: "Any algorithm or other method of combining the indices shall be fixed from the creation of the index." As stated in our 10/9/19 letter, most indices, including the S&P 500, have a provision that allow an index sponsor to make modifications to the index to enable the index to continue to perform when economic circumstances change. Index sponsors' ability to make such modifications are essential when these events occur. This ability will be particularly important when the LIBOR is no longer published after 2021.

ACLI continues to be concerned that this provision's implicit requirement for an algorithm of an index less than 15 years old to be fixed, without an exception for changes made pursuant to an index provider's established governance rules and procedures, could jeopardize the illustration of a number of fixed indexed annuities and consumers' understanding of these products.

For these reasons, ACLI respectfully urges the Working Group to reconsider modification to Section 6.F.(9)(b)(iii) to read as follows:

> (iii) Any algorithm or other method of combining the indices shall be fixed from the creation of the index except for changes made pursuant to the index provider's established governance rules and procedures;

If the above does not address Working Group concerns, we would appreciate to opportunity to work with the Working Group to develop language to address these concerns without jeopardizing the illustration of indices that have existed for less than 15 years.

ACLI thanks the Working Group for its continued consideration of our views. We would be glad to answer questions relating to any of the above.

Sincerely,

Roberta B. Meyer
V.P and Associate General Counsel

Brian Bayerle
Senior Actuary

Roberta B. Meyer

Brian Bayerle

October 9, 2019

Mr. Mike Yanacheak
Chair, Annuity Disclosure (A) Working Group
National Association of Insurance Commissioners

Re: Proposed Revisions to the NAIC Annuity Disclosure Model Regulation

Dear Mr. Yanacheak:

The American Council of Life Insurers (ACLI) and the Index Annuity Leadership Council (IALC) support the efforts of the NAIC Annuity Model Disclosure Working Group (Working Group) to amend the Annuity Disclosure Model Regulation (Model Regulation) and provide a framework for illustration of indices that have been in existence for 15 years or meet certain requirements. These indices were designed to give consumers more choice and the possibility of increased performance, so it is important that the illustrations of these indices provide consumers meaningful product education and disclosure.

Although the ACLI and the IALC support the efforts to amend the Model Regulation, our members are concerned that certain technical issues in the draft, recently voted on or still under consideration by the Working Group, will restrict illustrations in an arbitrary manner and thus hinder consumer understanding of indexed annuities. In addition, these issues could inadvertently impede innovation. The specific areas of concern are:

1. Section 6.F.(9)(b)(i) - whether the term “financial instruments” needs additional conditions.
2. Section 6.F.(9)(b)(iii) - requirement for indices that have been in existence less than 15 years that the index rules be fixed without exceptions.
3. Section 6.F.(9)(b)(iv) - requirement (via drafting note) to make the algorithm available to the consumer.

Section 6.F.(9)(b)(i): Financial Instruments

The ACLI and the IALC believe that the requirements in this section for indices that have been in existence less than 15 years should be strengthened. We support the language that has been proposed by the ACLI: “The index is a combination of indices or other financial instruments, each of which <u>has its own verifiable, published performance history and</u> has been in existence for at least fifteen (15) years.” This added requirement would ensure that consumers can independently research the performance history of the indices and financial instruments.

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Section 6.F.(9)(b)(iii): Fixed Algorithm

The ACLI and the IALC have serious concerns with the language that states "Any algorithm or other method of combining the indices shall be fixed from the creation of the index." Most indices, including the S&P 500, have provisions that allow the index sponsor to make modifications that enable the indices to continue to perform as originally intended when economic environments change. It is essential that the index sponsor has this ability when those events occur. For example, the S&P 500 could not effectively track the largest 500 U.S. stocks if it only tracked the performance of the stocks that were in its original construction.

As another example, when the LIBOR is no longer published after 2021, many index sponsors will need to revise their indices to reference other risk-free rates. Although the revised indices will perform prospectively based on the same principles as they had historically, if the indices are less than 15 years old, the proposed fixed algorithm requirement would force companies to stop illustrating the indices if they used LIBOR.

Moreover, index sponsors have established strong and independent governance processes to manage these issues.[1]

In view of the above, the ACLI and the IALC believe it is important and appropriate for the Working Group to include the following exception to the fixed algorithm requirement: "Any algorithm or other method of combining the indices shall be fixed from the creation of the index <u>except for changes made pursuant to the index provider's established governance rules and procedures</u>."

Section 6.F.(9)(b)(iv): Algorithm Availability to Customer

The ACLI and the IALC also have serious concerns with including a drafting note in the Model Regulation that would prompt each state to consider whether the *index algorithm* should be required to be made available to consumers. This requirement would be in addition to section 6.G.4.(b)(ii) and (iii), which state: "The consumer may request further explanation of the algorithm used to determine the weights."

The ACLI and the IALC note that there is a critical difference between disclosure of the "index algorithm" and disclosure of an "explanation of the algorithm used to determine the weights."

While the index algorithm is very technical and may contain an index sponsor's trade secrets, the explanations of index algorithms are more consumer-friendly. Index sponsors and insurers work together to create consumer-appropriate materials that explain how the indices work, such as websites with daily values, written brochures, and videos containing a simple explanation of the index mechanics.[2]

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[1] We have attached the Principles for Financial Benchmarks published by IOSCO as an example.
[2] For example, information for the BNP MAD 5 Index can be found here: https://madindex.bnpparibas.com/.

Using a car analogy, the published materials are like user manuals, while the index algorithm is like the patented technology used in the engine to increase performance. Therefore, the ACLI and the IALC believe it is appropriate to require "further explanation of the algorithm" in section 6.G.4.(b)(ii) and (iii), but do not support the drafting note for section 6.F.(9)(b)(iv).

Conclusion

The ACLI and the IALC hope that the Working Group finds the information within this letter to be informative. Given the technical nature of index construction and governance, the ACLI and the IALC would welcome the opportunity to have further dialogue on index practices within the industry.

Sincerely,

Roberta Meyer

Roberta B. Meyer, ACLI

Jim Poolman

Jim Poolman, IALC