Draft: 8/21/24

Life Insurance and Annuities (A) Committee
Chicago, Illinois
August 15, 2024

The Life Insurance and Annuities (A) Committee met in Chicago, IL, Aug. 15, 2024. The following Committee members participated: Judith L. French, Chair (OH); Doug Ommen, Co-Vice Chair (IA); Carter Lawrence, Co-Vice Chair (TN); Mark Fowler (AL); Barbara D. Richardson (AZ); Karima M. Woods represented by Stephen Flick (DC); Justin Zimmerman (NJ); Adrienne A. Harris represented by Bill Carmello (NY); Elizabeth Kelleher Dwyer represented by Matt Gendron (RI); Scott A. White represented by Craig Chupp (VA); and Nathan Houdek (WI). Also participating were: Nour Benchaaboun (MD); Fred Andersen (MN); Eric Dunning (NE); Michael Humphreys (PA); and Rachel Hemphill (TX).

1. Adopted its July 15 Minutes

Director French said the Committee met July 15 and took the following action: 1) adopted its 2022 Spring National Meeting minutes; and 2) adopted the 2025 revisions to the *Valuation Manual*.

Commissioner Ommen made a motion, seconded by Commissioner Lawrence, to adopt the Committee's July 15 minutes (Attachment One). The motion passed unanimously.

2. Heard a Federal Update

Taylor Walker (NAIC) gave an update on the U.S. Department of Labor's (DOL's) proposed Retirement Security Rule, also known as the fiduciary rule, and amendments to the prohibited transaction exemptions (PTEs), which exempt fiduciaries from what would otherwise be prohibited conflicts. Walker reminded the Committee that the rule was issued in November 2023 with a 60-day public comment period. However, as many noted at the time, the comment period really amounted to only 30+ business days with offices closed during the holidays. After a brief review by the Office of Management and Budget (OMB), the final version of the fiduciary rule was published in the Federal Register on April 25, 2024. The DOL made some slight changes to the final version of the fiduciary rule, but the most significant updates, the ones that will impact industry most, remain intact.

Walker explained that the fiduciary rule: 1) expands the definition of an investment advice fiduciary. Fiduciary status applies to nearly all financial professionals who provide retirement guidance, including life insurers who sell annuity products; 2) the new fiduciary definition eliminates the requirement that advice be given on a "regular basis." Now, one-time advice, including rollover recommendations, is considered fiduciary advice; and 3) the fiduciary rule adds additional restrictions and requirements to the PTEs.

Walker explained that most of the fiduciary rule was set to take effect on Sep. 23, 2024. But last month, two federal district courts in Texas, in two separate cases, stayed the rule. This means that industry does not have to comply with the fiduciary rule until the lawsuits are resolved. The first suit was filed by the Federation of Americans for Consumer Choice (FACC), along with several independent insurance agents. The second was brought by nine insurance trade associations, including the American Council of Life Insurers (ACLI), National Association of Insurance and Financial Advisors (NAIFA), Insured Retirement Institute (IRI), and National Association for Fixed Annuities (NAFA). In both court cases, the judges noted that the fiduciary rule shares many of the same legal defects as the Obama-era 2016 fiduciary rule and exceeds the DOL's statutory authority. The DOL is expected to appeal to the conservative Fifth Circuit, which has been hostile to past Biden administration policies.

3. Adopted the Report of Life Actuarial (A) Task Force

Hemphill said the Life Actuarial (A) Task Force met Aug. 11–12 at the Summer National Meeting. Hemphill said the Valuation Manual (VM)-22 (A) Subgroup continues to develop principle-based reserving (PBR) requirements for non-variable annuities and is currently conducting a field test that will run through September. The planned initial effective date is Jan. 1, 2026, with a three-year implementation period that ends on Jan. 1, 2029, after which PBR will become mandatory for non-variable annuity contracts on a prospective basis.

Hemphill said that for indexed universal life policies (IUL), Task Force members have reviewed company illustrations to assess compliance with current Actuarial Guideline *XLIX-A—The Application of the Life Illustrations Model Regulation to Policies With Index-Based Interest Sold on or After December 14, 2020* (AG 49-A) requirements and identify any concerns. Members found that the latest revisions to 49-A appeared initially effective in addressing maximum illustrated rate company outliers. However, Task Force members were surprised to find the inclusion of hypothetical returns or historical averages displayed in the illustrations alongside the maximum illustrated rates. As a next step, state insurance regulators will be following up with companies to better understand how companies see this practice as fitting within the current requirements.

Hemphill reported that for the generator of economic scenarios (GOES), progress continues with the Task Force having received a presentation on model office results. The Task Force is also hearing company presentations in regulator-only sessions on their individual results from the second economic scenario generator field test. So far, companies have noted tremendous improvement in the scenarios and generator since the first field test, but they have also noted additional tweaks that they believe would improve the generator and resulting scenarios. Companies also have noted that their results are directionally consistent with those from the model office, indicating it is an effective tool for obtaining a general understanding of potential industry impacts. The planned effective date of the updated generator is Jan. 1, 2026.

Hemphill said the Task Force exposed a draft actuarial guideline on asset adequacy testing (AAT) when there is reinsurance ceded. The Task Force plans on discussing comments received at the Fall National Meeting, as well as discussing specifically: 1) the scope of the actuarial guideline; and 2) the level of aggregation of results (e.g., by line of business for a given counterparty or by counterparty) during interim meetings leading up to the Fall National Meeting.

Chupp made a motion, seconded by Commissioner Arnold, to adopt the report of the Life Actuarial (A) Task Force. The motion passed unanimously.

4. Adopted the Report of the Accelerated Underwriting (A) Working Group

Commissioner Houdek said the Accelerated Underwriting (A) Working Group met Aug. 6, July 11, June 13, and April 3. During these meetings, the Working Group established a work plan, followed it, and adopted a guidance document for state insurance regulators on accelerated underwriting in life insurance and a referral to the Market Conduct Examination Guidelines (D) Working Group to consider revisions to the *Market Regulation Handbook.* Commissioner Houdek noted that the project history for the *Regulatory Guidance and Considerations* (Attachment Three) explains that the effort to develop regulatory guidance started years ago, with the Educational Report adopted by the Life Insurance and Annuities (A) Committee in 2022. Commissioner Houdek explained that a small drafting group met biweekly during 2022 to develop draft regulatory guidance that was exposed for comment in January 2023. Comments were submitted in the spring of 2023, but revisions to that draft were paused for the remainder of 2023 while the Innovation, Cybersecurity, and Technology (H) Committee finished the *Model Bulletin on the Use of Artificial Intelligence (AI) Systems by Insurers* (AI Model Bulletin) and the Big Data and Artificial Intelligence (H) Working Group finished the AI life survey. Both projects were completed in December 2023.

During its April 3 meeting, the Accelerated Underwriting (A) Working Group devised a work plan to complete the regulatory guidance and referral by the Summer National Meeting. Through April and May, a drafting group met biweekly to revise the January 2023 draft guidance document and referral in light of the completion of the AI Model Bulletin and AI life survey. During its June 13 meeting, the Working Group reviewed revised drafts, dated June 3, 2024, The June 3 drafts were exposed for a public comment period that ended June 30. A comment letter on the regulatory guidance was submitted by Center for Insurance Research—CIR and several consumer representatives, and another letter came from the ACLI.

The Working Group met July 11 and reviewed the comments, revised the draft, and exposed the revised July 11 draft for a final comment period to catch any unresolved issues or mistakes of fact. This final comment period ended July 26. The NAIC consumer representatives submitted the only comment letter, reiterating earlier concerns. The Working Group met Aug. 6 and adopted the July 11 *Regulatory Guidance and Considerations* and the June 3 market regulation referral.

Director French said that based on the length of time spent on this project and the public exposure periods over the past two years, she feels comfortable with having the Life Insurance and Annuities (A) Committee consider the adoption of the July 11 *Regulatory Guidance and Considerations* and the June 3 market regulation referral. Benchaaboun said that the regulatory guidance and referral was a group effort and that he thinks the final product is excellent. Gendron said that he has been involved with the small drafting group. He echoed Benchaaboun's comments and said he supports the adoption of the draft.

Gendron made a motion, seconded by Commissioner Arnold, to adopt the report of the Accelerated Underwriting (A) Working Group, including its Aug. 6 (Attachment Two), July 11 (Attachment Two-A), June 13 (Attachment Two-A-1), and April 3 (Attachment Two-A-2) minutes. The motion passed unanimously.

Gendron made a motion, seconded by Commissioner Zimmerman, to adopt the July 11 *Regulatory Guidance and Considerations* (Attachment Three) and the June 3 Market Regulation referral (Attachment Four).

5. Heard an Update on the Life Workstream of the Special (EX) Committee on Race and Insurance

Commissioner Fowler reported that Life Workstream of the Special (EX) Committee on Race and Insurance met Aug. 5, April 25, and March 28. During its March 28 meeting, The Life Workstream continued its focus on barriers to access to life insurance for people in underserved communities, focusing on criminal history. He reported that the Life Workstream heard several interesting presentations providing different perspectives on how justice-impacted individuals continue to face barriers long after committing a crime. The Life Workstream heard from Chastity Murphy (U.S. Department of the Treasury—Treasury Department) about some of the current initiatives at the Treasury seeking to address barriers in financial services for justice-impacted communities. The Life Workstream also heard from Jo-Ann Wallace (National Legal Aid and Defender Association [NLADA] Mutual Insurance Co., a Risk Retention Group). Wallace spoke about the obstacles created by the intersection of racial bias and a criminal record. Wallace said the negative public perception around individuals with criminal records acts as a barrier for many businesses to engage with this community. She suggested some ways the NAIC might help remove barriers to insurance for people with a criminal record.

Additionally, the Life Workstream heard from Shannon Ross (The Community). The Community is an organization focused on correcting the common misperceptions about justice-impacted individuals through videos, presentations, and conferences; Ross is also host of the "All In All Out" podcast. Ross spoke about his personal experiences trying to purchase life insurance as a formerly incarcerated individual. The Life Workstream heard from Raymond Robinson (Raymond Robinson Group LLC). He spoke about the challenges he has experienced in finding suitable life insurance products for individuals with a criminal history. The Life Workstream also heard from Peter Kochenburger (NAIC Consumer Representative and Southern University Law School), who spoke about the use of criminal history data in insurance. Commissioner Fowler said recordings of these presentations are posted on the Special (EX) Committee on Race and Insurance's web page on the NAIC website.

Commissioner Fowler said the Life Workstream also met April 25. During this meeting, it heard a presentation from the ACLI on the use of criminal history in life insurance underwriting. The Life Workstream also finalized two work products. The first is the *Financial Wellness Resource Guide* (Attachment Five), which is a project started by the 2023 Life Workstream. This document highlights financial literacy initiatives in Washington, DC; Maryland, and Oregon. Commissioner Fowler said the hope is that in the future, additional states and outside organizations will add information to the guide so that it can become a robust resource for states looking to implement financial literacy initiatives. The Life Workstream also adopted an endorsement in support of state legislation requiring a financial literacy course as a prerequisite to high school graduation (Attachment Six). Studies show that mandatory financial literacy courses in high schools make a measurable difference in the lives of kids in underserved communities.

Additionally, Commissioner Fowler reported that the Life Workstream met Aug. 5. Sharon Dietrich (Community Legal Services of Philadelphia) gave a presentation on clean slate initiatives and had some questions and comments about the April ACLI presentation. The Life Workstream exposed a draft survey asking about insurers' use of criminal history in underwriting. The survey is 11 questions, cut back from a broader initial draft that was looking to gather information about the use of criminal history relative to producer engagement, company operations, use of data, product design, and its use in underwriting. The draft is narrowly focused on life insurance underwriting. It was exposed for a xx-day public comment period ending Sept. 5. The Life Workstream plans to schedule a meeting in late September to discuss any feedback received.

Director French asked if the survey was going to be something that state insurance regulators could make voluntary for their domestic insurers. Commissioner Fowler said that there was no intention to make the survey mandatory. He said that the survey is an effort to understand this slice of the market better.

Commissioner Ommen said that the workstreams are doing a good job, but he is concerned that there may not be a lot of collaboration among the Life, Health and Property/ Casualty Workstreams, as well as other groups at the NAIC that are working in areas that may touch on these issues, like the Accelerated Underwriting (A) Working Group and the Innovation, Cybersecurity, and Technology (H) Committee and its groups. Commissioner Ommen suggested that a group could be formed to combine these efforts and increase the collaboration between the overlapping work occurring in the three separate workstreams and elsewhere.

6. <u>Heard Presentations from Securian Financial and Athene on Illustrations</u>

Andersen said that as a follow-up to the illustration discussion during the Spring National Meeting, Athene will speak about annuity illustrations, and Securian will present on life insurance illustrations. As the Life Insurance and Annuities (A) Committee and the Life Actuarial (A) Task Force continue with efforts that include the review and analysis of illustrations and related materials, it is important to know how the more highly regulated parts of the sales process, like illustrations, relate to information that is less heavily regulated.

Brian Rock (Securian Financial) reviewed life insurance illustration laws and discussed how illustrations might be used along with other types of materials that might be presented to a consumer. He summarized the provisions in the *Life Insurance Illustrations Model Regulation* (#582), which regulates how life insurance companies present policy illustrations to potential buyers. The regulation aims to ensure that the life insurance illustrations are clear, accurate, and not misleading. It standardizes how insurers present their products to prevent consumers from being misled by overly optimistic or unclear illustrations. Rock said Model #582 applies to all group and individual life policies with the exception of variable life, credit life, and policies with no illustrative death benefits exceeding $10,000. Model #582 requires descriptions of premiums required, policy features, riders, and options both guaranteed and nonguaranteed. He said Model #582 requires numeric summary information and tabular detail information along with disclosure requirements. Model #582 also requires that an illustration be provided to a consumer at the time of application and at the time of policy delivery, if an illustration is used.

Rock explained that Model #582 defines three types of illustrations and applies to each: 1) a basic illustration, which is a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements; 2) a supplemental illustration, meaning illustrations furnished in addition to the basic illustration that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted under the basic illustration; and 3) an in-force illustration, which is an illustration furnished at any time after the policy has been in force at least one year. Model #582 also requires annual certifications by an illustration actuary that the disciplined current scale used in illustration is in conformity with all associated standards of practice and this regulation.

Rock said the NAIC adopted Model #582 in 1995. Since that time, there has been continued evolution in product design, including the introduction of benefits that are tied to an index or indices. Although these policies are also subject to Model #582, not all of their features are explicitly referenced in the model. This has resulted in a lack of uniform practice in its implementation. He said as indexed universal life (IUL) products grew in popularity, concerns about the methods insurers used to illustrate potential returns also rose. In response to these concerns, the NAIC developed *Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest* AG 49 in 2015. AG 49 sets standards for how IUL policies could be illustrated, aiming to ensure that consumers received more realistic and consistent information. AG 49 placed limits on the assumed interest rates that could be used in an illustration and introduced rules on the treatment of policy laws, particularly when illustrating the impact of borrowed of borrowing against the policy's cash value.

Rock said that after implementation of AG 49, the life insurance industry adjusted its practices and complied with all regulations. He said new and more complex products and features, such as multipliers, were developed that were still technically compliant with AG-49, but they raised concerns amongst state insurance regulators and consumer advocates. This led to the development and adoption of AG 49-A in 2020. This regulation addressed these new product features by enhancing provisions on limits to the maximum crediting rate and refining the rules around policy loan illustrations. Most recently, in 2023, AG 49-A was further revised to limit the maximum crediting rate and control for the illustrated leverage on the hedge budget used for an indexed account.

Rock said it is important to note that individual carriers may also have policies and procedures for agents to follow when selling their products, including licensing and appointment requirements, sales practice requirements on advertising, disclosures, illustrations, suitability, sales to seniors and vulnerable adults, premium financing requirements, unfair trade practices, policies against specific sales concepts, such as stranger owned life insurance, captive insurance sales strategies, and sales rebating concepts. There could also be requirements on replacements, processes around complaints and compliance with requirements for agents.

Rock spoke about illustration practices and consumer presentations. He said there are carrier-generated presentations and field-generated presentations. Carrier-generated presentations are materials or tools provided by the insurer for the agent to use. Some of the materials may be consumer-facing, while other materials may be educational for the agent. Product illustrations are carrier-generated presentations and must comply with the regulations covered earlier in the presentation. Optional reports may also be carrier-generated. That includes things like policy charges or internal rates of return for specific scenarios or upon death. These may be developed to help customers better understand the need for life insurance and include insurance need calculators, estate tax projection tools, business buy/sell opportunities, deferred compensation, or corporate owned life insurance (COLI) opportunities. Marketing materials are also carrier-generated and include consumer brochures and case studies on how products or features within the products work.

Rock said field-generated presentations are developed by or provided from outside the insurer and are used by an agent or an advisor. Some examples of field-generated presentations include technology vendors to help advisors and customers better compare products and features. Field-generated materials may bring illustrated values to life through visual aids or include other online flexibility to help customers better understand how their choices impact the illustration, such as what happens when one starts taking income at different ages or different distribution amounts. Field-generated materials could also include conceptual materials that discuss how certain life insurance or structures might be used. Agent-generated marketing materials show agents discussing products in their own voice. Rock said insurers may have different rules for reviewing agent-generated marketing materials.

Rock then summarized some of the Financial Industry Regulatory Authority (FINRA) rules that can apply to life illustrations. Rule 2210 lays out rules for communications with the public. This rule details that communications must be based on principles of fair dealing executed in good faith. Communications must be fair and balanced and provide a sound basis for evaluating the facts with respect to any particular security or type of security. Communications must provide balanced treatment of the risks and potential benefits, be consistent with the risks of fluctuating prices and the uncertainty of dividends or rates of return and yield inherent to investments. Communications must provide details and explanations appropriate to the audience and must not miss omit any material factor qualification that could cause the communication to be misleading. Communications must not make any false, exaggerated, unwarranted, promissory, or misleading statements or claims and must not contain any untrue statement of material facts or otherwise be false or misleading.

Rock said that FINRA Rule 2211 provides guidance in addition to Rule 2210, specific to variable life and variable annuities. It includes general considerations around product identification and liquidity. He said this includes claims about guarantees and then specific considerations around historical performance, hypothetical illustrations and what may be used to demonstrate how variable life insurance operates and a maximum of 12% gross rate for investment returns, providing one of the returns is a 0 % gross rate.

Mike Consedine (Athene) and Adam Politzer (Athene) spoke about the history and development of annuity illustrations with a focus on the *Annuity Disclosure Model Regulation* #245 and Athene's experience in its day-to-day application. Consedine said that Athene has a long history of selling fixed indexed annuities and was actively involved in the development of Model #245. Athene's commitment to clear, comprehensive, and transparent consumer communication has always been a guiding principle, and he said he believes that Model #245 plays a crucial role in achieving these goals. However, only 10 states have adopted the current provisions in Model #245 addressing illustrations. Increased adoption among the states would ensure more consistency in how insurers approach annuity illustrations, providing a uniform standard that benefits both consumers and the industry. The NAIC promoting consistency and uniformity in this area would go a long way in assisting both companies and consumers alike.

Consedine said that despite the low adoption rate, Athene finds that Model #245 works reasonably well, although there are still challenges regarding adequate disclosure consistency in illustrating nonguaranteed elements and clearly showing minimum guarantees. These elements have proven essential in helping consumers understand the potential performance of their annuity contracts. Consedine said that Athene continues to support the application of Model #245. He added that with broader state adoption, along with other measures to simplify the marketing and sale of needed guaranteed income products, the effectiveness of this regulation can be further enhanced. Ths would ensure that all consumers receive the highest standard of information and protection.

Politzer provided additional detail about Athene's experience with Model #245. Section 6 governs illustrations for fixed and fixed indexed annuities with nonguaranteed elements. The focus of this section is on making sure there is adequate disclosure. This section defines with mathematical precision how the illustration should be completed. There is a big focus on the minimum guarantee within the contract, which Athene thinks is critically important. The focus is on a particular index track record and, in particular, the last 10 or 20 years of performance of the index. Model #245 does not allow the illustration of bespoke indices that have less than 10 years of history. An index must have 10 years of history in order to illustrate it.

Politzer highlighted the disclosure language that Model #245 requires to be presented to consumers: 1) the illustration is hypothetical; 2) the purpose of an illustration is to explain how the contract works; and 3) the illustration is not a promise of performance. These disclosures are critical to the effectiveness of the illustration. Politzer explained that Model #245 requires that certain information must be included in the illustrations. There must be an illustration of the "worst-case scenario" for the consumer, which, for a fixed indexed annuity, shows 0 credits in any year where the index has negative returns. This part of the illustration highlights the minimum guarantees of the contract. The illustration also shows nonguaranteed elements of the contract from the most recent 10 years to show the mechanics of the contract—what happens when the index goes up and when the index goes down. Another prescribed exhibit in the illustration must show the most recent 10 years of performance, the highest 10 years of the last 20 years, and the lowest 10 years of the last 20 years. This makes clear that there is a range of outcomes and illustrates the most logical ones. It is prescribed so that each carrier has to do it the same way. However, only 10 states have adopted the current version of Model #245.

Politzer said, for the most part, illustrations are fairly consistent in the remaining 40 states. He said that there are some deviations in practice, the most common being companies will illustrate more than 10 years of data if it is available. There are companies in the 40 states that also illustrate bespoke indices without 10 years of history. He said that Athene has been discussing that the most recent 10 years and even the most recent 20 years have been a strong set of markets for the S&P 500, which is considered the benchmark index and the index used most commonly in Athene's products. So, any reliance on that period of data is going to show an optimistic forecast of the contract, as good as any other asset class. Athene has, as a result, added some additional disclosures highlighting that this had been a higher set of years of performance. Athene has been following Model #245 for a long time and has found that illustrations are helpful in promoting annuities and helping customers use them for their retirement needs. He said Athene has received few complaints about illustrations over the years. Ultimately, the performance of Athene's contracts has been a testament to how well the illustrations have been working.

Politzer reiterated that variable annuities, including registered index-linked annuities (RILAs), must also comply with FINRA Rule 2210 and U.S. Securities and Exchange Commission (SEC) Rule 156 effective Sept 23, 2024. He highlighted three ways the Model #245 differs from the SEC and FINRA rules: 1) the NAIC rules are much more prescriptive, while the FINRA rules are more focused on how the contract works; 2) all materials go through a rigorous review and approval process with FINRA; and 3) FINRA will not approve the use of any pre-inception index performance. Politzer reviewed an illustration of an Athene RILA. He explained that the illustration shows how the buffer upgrades protection on the way down, and then it shows an illustration of how either a cap rate or a participation rate would work within the RILA product. It is really just a hypothetical to explain the key features of the product.

Commissioner Humphreys said he attended a presentation at the NAIC/Consumer Liaison Committee meeting that talked about illustrations and reviewed modeling of certain illustrations that showed a high failure rate. He said there is a gap between what industry and the consumers are saying with respect to illustrations that is more significant than he would normally expect. He asked for some clarification regarding this gap.

Richard Webber (NAIC Consumer Representative) gave the presentation at the NAIC/Consumer Liaison Committee meeting, and he explained that the presentation he gave showed a different way of looking at illustrations. He said life insurers produce illustrations in conformance with Model #582. The problem is that Model #582 is 30 years old, and it did not contemplate indexed products that use an outside reference rather than a disciplined scale or a declared rate. The approach he presented reviews illustrations from a real-world standpoint. The illustration is produced at a constant rate of return, and that does not exist in nature. He said there are fluctuations between the 0% guarantee, or whatever the guarantee is, and the current cap. The sequence of returns is the reality of what will occur with the policy and what happens when the illustration is not only showing a substantial input of premium but then a substantial extraction of cash value later on, both in withdrawals and loans. He said that one single interest rate does not take a sequence of returns into account. Webbr said his analysis of the numbers in an illustration (by taking and running thousands of scenarios) found in one case as much as a 95% failure rate. He said he would like to work with the Life Insurance and Annuities (A) Committee and the Life Actuarial (A) Task Force to find ways of bringing these two worlds together—the regulated illustration world and something that might reflect reality in a more modern way.

Commissioner Ommen said that he appreciated the support indicated for Model #245. However, he asked if Athene, in the 40 states that do not have the model, illustrates newer, younger indices? Politzer said that Athene illustrates those indices in the states where it is allowed. He said that Athene believes that those indices are good for their customers and for the industry in general and that there is a demand for illustrations of that information. At times, especially in the current economic environment, Athene can produce very high illustrations. He said in a couple of situations, Athene has decided not to illustrate because the company was not comfortable putting the illustration in front of consumers, but it has enhanced its disclosures and want to guard against setting expectations too high.

Commissioner Ommen said that Model #245 is prescriptive, but he asked in those states without it, what are some of the requirements surrounding the use of annuity illustrations beyond using good judgment. He asked what industry is doing to curb the practice of using illustrations that are beyond reasonable expectations. Politzer said he has been in some groups talking about forecasting and that there are some models out there that do produce some reasonable forecasts, but that would open a whole line of inquiry about how to set parameters for those forecasts. Politzer said, at this point, it is just a matter of using judgment to look at things and asking whether the company is comfortable putting an illustration in front of their advisors and customers.

Gendron said the presentation before the NAIC/Consumer Liaison Committee showed a number of life insurance illustrations that were sold with the idea that there would be a certain amount of income coming off of those life insurance policies. Gendron asked whether Rock thought there was a problem with any of those sales. Rock replied that what is being seen is a sensitivity to insurance products and some of the patterns of returns, specifically when a person is leveraging money. He said that maybe some of those were taking loans, and different things were premium financed in order to get income to repay those loans. So, some of those sales are showing the leverage that one can get out of a life insurance policy. He said that the way AG 49 works is that it shows the level of return and not the pattern of returns. He said that what the presentation is showing is some of the sensitivity for those risks embedded in some of those products.

Gendron agreed with Rock's assessment, but he wondered whether it is a problem, in Rock's opinion, if a producer is making a representation about being able to do certain things with a life insurance product, and the illustrations are being used to support that promise. Rock replied that if a producer is guaranteeing a return or stating that a future scenario will happen and has not identified the risks embedded in that, then that is a problem. He said that is why there are numerous disclosures and different scenarios embedded in the illustration to help expand upon some of those risks that are associated with the product sale. Gendron said he generally agreed that the problem lies with the marketing of these products, but there might be some company oversight that would be helpful to ensure that representatives in the marketplace are not using their documents in overly aggressive ways.

Gendron said that on the annuity side, the presentation at the NAIC/Consumer Liaison Committee did not identify annuity illustrations, but there was a working group a number of years back that heard from consumer representatives that models were being created using back testing. He said Rhode Island has the current model #245, so he would not see illustrations of these newer indices. However, he said he heard Politzer express some hesitation to illustrate in some situations, and he asked whether Politzer thought there should be a different set of rules to bring up all boats. Politzer said Athene is advocating for full 50 state adoption of the current Model

#245. He said there is no question that as yields rose, especially over the past three years and rates got much higher, the same mathematical concept applied in the past has resulted in unreasonable outcomes with some of the newer indices. He said that some of this gets technical and involves the way these indices are constructed. He said they are excess return indices and that part of the issue when illustrating them against the historical low interest rate environment, but with rates from today, is that more unreasonable outcomes are produced than in the past. He said the challenge is how to get information to people without setting an unreasonable set of expectations because he believes that these indices are good for consumers in a lot of ways and that there is demand to understand how the indices will work and in what environments.

Gendron asked whether Politzer thought that producers fully understand these indices enough to explain them to a doctor or a teacher. Politzer said that Athene was going to great lengths as a company to focus on education. He offered to introduce the Committee to an index standard group it has worked with to develop training on how bespoke indices work and to make sure Athene's advisors have all the information they need to sell these products. Consedine emphasized that they are committed as an industry to training and education. He said that he expects there to be continuing demand for guaranteed income products to help address the retirement crisis in this country. He said that industry, state insurance regulators, and consumers would all benefit from consistency in the marketplace and if there were uniform rules of the road, many of the issues being discussed now would resolve themselves over time.

Andersen reported that state insurance regulators are reviewing life and annuity illustrations and other marketing materials. He said they plan to develop findings and discuss how best to address short-term and long-term issues. Director French said that the presentation was intended to be a springboard to future discussions, and she looks forward to future conversations on this topic.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.

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