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Submitted electronically to jcook@naic.org

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

Re: Proposed Revisions to the NAIC Annuity Disclosure Model Regulation (#245)

Dear Mr. Yanacheak:

On behalf of our members, the Insured Retirement Institute ("IRI")[1] appreciates the opportunity to provide these comments on the exposure draft (the "Exposure Draft") of possible revisions to the National Association of Insurance Commissioners ("NAIC") Annuity Disclosure Model Regulation (#245) (the "Model") issued on March 7, 2019, by the NAIC Annuity Disclosure (A) Working Group (the "Working Group"). We are generally supportive of the Working Group's effort to enhance the Model. However, we do have several important concerns to share with the Working Group regarding the Exposure Draft.

1. ***Prohibiting illustrations of indices that have existed for less than twenty (20) years – up from ten (10) years in the current Model — would cause substantial disruption for a significant number of products already in the marketplace.***

While the exact number of indices impacted by the Exposure Draft's revision to Section 6(F)(9)(b) is unclear, our members believe this proposed change would adversely impact a significant number of indices utilized by products on the market today. Many indices would meet a 10-year requirement for historical data, but not 20 years. This change would therefore

[1] IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

cause significant disruption for those product manufacturers and index providers that have been illustrating indices on products that satisfy a 10-year requirement. In short, this change would create an unlevel playing field, providing favorable treatment (i.e., the ability to illustrate products) for some carriers but not others based solely on whether their products use indices that have been in existence for a seemingly arbitrary number of years. We do not believe this was the Working Group's intent.

We understand that the proposed increase in the number of years of required historical data is intended to capture a more complete economic cycle to help consumers evaluate indices and their performance. However, we have seen no evidence or data indicating that the proposed change from 10 years to 20 years would actually be helpful to consumers or outweigh the market disruption this change would cause or the negative impact it would have on consumer choice and product innovation. Further consumer testing evidencing actual benefits to consumers should be conducted prior to such a significant disruption.

Based on the foregoing, if the Working Group decides to move ahead with an increase in the "in existence" requirement, IRI respectfully urges the Working Group to consider a more modest increase to 15 years rather than 20 in order to mitigate the unintended consequences described above.

2. ***Requiring that an index be constructed entirely of a "combination of indices" is overly restrictive and should be revised to instead allow for a combination of "index components."***

Section 6(F)(9)(b)(i) of the Exposure Draft would allow illustrations of indices that have not been in existence for at least twenty (20) calendar years if they are constructed entirely of "a combination of indices, each of which has been in existence for at least twenty (20) calendar years." While we appreciate the effort to provide this alternate path for the provision of illustrations, this formulation fails to recognize the fact that many indices in the market today are made up of index components such as ETFs and futures contracts rather than underlying indices. Such index components are generally less expensive and easier to hedge, and therefore could offer greater potential benefits to consumers.

We understand the Working Group would prefer to avoid introducing new defined terms to the Model, and we suspect this may have led to the use of the phrase "combination of indices." However, we believe the concept of "index components" can be easily explained without a formal definition by providing a non-exhaustive list of examples of index components. We also believe "index components" can be further described by specifying how to determine whether a particular component has been "in existence" for the requisite number of years. Based on our review of the various index components used in the market today, and our assessment of the types of components that may be utilized in the future, we respectfully recommend that the Working Group insert the following, either as actual rule text or as a drafting note:

> "An underlying index component is considered to meet the 15-year "in existence" requirement so long as it (1) has a published live date exceeding the requisite 15 years or (2) the underlying index component is comprised solely of other underlying components, each of which, standing on its own, has a published live date exceeding the requisite 15 years."

Allowing illustrations comprised of "index components" rather than "underlying indices" would facilitate greater product and index innovation in the future, especially as product manufacturers and index providers strive to compete on consumer choice and cost savings, both of which will obviously help the end consumer. By contrast, prohibiting illustrations of products using indexes that are comprised of index components rather than other underlying indices would serve only to deprive consumers of a valuable tool. Assuming proper disclosure and explanation, our members have heard from consumers and producers that they are appreciative of illustrations and tools that model past index performance, even if such history is based in part on hypothetical data (and disclosed as such). In short, limiting index design would actually have the effect of limiting the information available to consumers before deciding whether to purchase a particular product.

3. ***Strict interpretation of the requirement that an algorithm or other method of combination be "fixed from the creation of the index" may not be feasible when circumstances require an index sponsor to make a modification in order to keep the index functioning.***

Generally speaking, algorithms are designed to be fixed and rules-based. They are not built to be later adjusted on a whim. As a result, IRI is supportive of the requirement that the algorithm or other method of combination be "fixed from the creation of the index." However, we are concerned that strict interpretation of the proposed requirement could prevent index sponsors from modifying algorithms or other methods of combining index components where modification becomes necessary in response to actions beyond the control of the index sponsor. Index sponsors generally have controls in place to modify the algorithm when, for example, a component becomes unavailable. Recently, index sponsors were required to make such a modification as a result of LIBOR being phased out and numerous indices requiring a suitable replacement benchmark.

Because index sponsors already have rules-based governance structures in place that allow for the modification of the index when such a modification is necessary to ensure index continuation, to preserve this flexibility, we recommend that the Working Group provide an exception to the proposed requirement that would allow index sponsors to modify algorithms or other methods of combination in response to significant events as permitted by the index sponsor's written governance policies. Index sponsors would be required to then make a written copy of their governance structures available to the Insurance Commissioner upon request.

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Thank you in advance for considering these comments. If you have questions about anything in this letter, or if we can be of any further assistance in connection with this rulemaking effort, please feel free to contact me at jberkowitz@irionline.org or (202) 469-3014.

Sincerely,

Jason Berkowitz
Chief Legal & Regulatory Affairs Officer
Insured Retirement Institute