

IRI PROPOSED SAFE HARBOR REVISIONS – ALTERNATIVE APPROACH 10/23/19 (REDLINE)

E. Safe harbor.

- (1) Recommendations and sales of annuities ~~Sales made in compliance with comparable standards (as defined in paragraph (4) below) SEC regulations and applicable FINRA rules pertaining to best interest obligations and supervision of annuity transactions~~ shall satisfy the requirements under this regulation. This subsection applies to ~~FINRA broker-dealer~~ all recommendations and sales of annuities made by financial professionals (as defined in paragraph (3) below) in compliance if, in connection with the sale of an annuity, the broker-dealer and the producer, who also is appropriately registered as a representative with FINRA, have complied with the business rules, controls and procedures for securities transactions that satisfy a comparable standard, regardless of whether the particular recommendation or sale is required to otherwise comply with such comparable standard. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this regulation.

Drafting Note: Non-compliance with comparable standards ~~SEC and FINRA requirements~~ means that the ~~broker-dealer transaction recommendation or sale~~ is subject to compliance with the requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
- (a) Monitor the relevant conduct of the financial professional seeking to rely on paragraph (1) or the entity responsible for supervising the financial professional, such as the financial professional's BD (as defined below) or RIA (as defined below), ~~FINRA member broker-dealer~~ using information collected in the normal course of an insurer's business; and
 - (b) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (1), such as the financial professional's BD or RIA, ~~FINRA member broker-dealer~~ information and reports that are reasonably appropriate to assist such entity ~~the FINRA member broker-dealer~~ to maintain its supervision system.
- (3) For purposes of this subsection (E), "financial professional" means a producer that is regulated and acting as:
- (a) a broker-dealer registered under federal or state securities laws (a "BD") or a registered representative of a BD (an "RR");
 - (b) an investment adviser registered under federal or state securities laws (an "RIA") or an investment advisory representative (an "IAR"); or
 - (c) a fiduciary under Section 3(21) of ERISA or Section 4975(f)(8)(J)(i) of the Internal Revenue Code (a "plan fiduciary").

IRI PROPOSED SAFE HARBOR REVISIONS – ALTERNATIVE APPROACH 10/23/19 (REDLINE)

Drafting Note: The requirement that a producer be “regulated and acting” as a BD, an RR, an RIA, an IAR, or a plan fiduciary means that a producer who is not explicitly acting in compliance with the relevant comparable standards (as specified in paragraph (4) below) is not eligible for this safe harbor and is subject to compliance with the requirements of this regulation.

(4) For purposes of this subsection (E), “comparable standards” has the following meaning:

(a) With respect to BDs and RRs, “comparable standards” means applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including but not limited to Regulation Best Interest and any amendments or successor regulations thereto.

(b) With respect to RIAs and IARs, “comparable standards” means the fiduciary duties and all other requirements imposed on such RIA or IAR by contract or under the Investment Advisers Act of 1940, including but not limited to SEC Form ADV and SEC interpretations. Notwithstanding the foregoing, recommendations of annuities by a state-registered RIA or IAR shall only be eligible for the safe harbor provided in this subsection (E) if the state in which the RIA or IAR is registered has adopted rules consistent with SEC Rule 206(4)-7 and any amendments or successor regulations thereto.

Drafting Note: SEC Rule 206(4)-7 requires IAs to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer to be responsible for administering the policies and procedures.

(c) With respect to plan fiduciaries, “comparable standards” means the fiduciary duties and all other requirements attendant to such status under ERISA or the Internal Revenue Code and any amendments or successor statutes thereto.

IRI PROPOSED SAFE HARBOR REVISIONS – ALTERNATIVE APPROACH 10/23/19 (CLEAN)

E. Safe harbor.

- (1) Recommendations and sales of annuities made in compliance with comparable standards (as defined in paragraph (4) below) shall satisfy the requirements under this regulation. This subsection applies to all recommendations and sales of annuities made by financial professionals (as defined in paragraph (3) below) in compliance with business rules, controls and procedures that satisfy a comparable standard, regardless of whether the particular recommendation or sale is required to otherwise comply with such comparable standard. However, nothing in this subsection shall limit the insurance commissioner’s ability to investigate and enforce the provisions of this regulation.

Drafting Note: Non-compliance with comparable standards means that the recommendation or sale is subject to compliance with the requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
 - (a) Monitor the relevant conduct of the financial professional seeking to rely on paragraph (1) or the entity responsible for supervising the financial professional, such as the financial professional’s BD (as defined below) or RIA (as defined below), using information collected in the normal course of an insurer’s business; and
 - (b) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (1), such as the financial professional’s BD or RIA, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.
- (3) For purposes of this subsection (E), “financial professional” means a producer that is regulated and acting as:
 - (a) a broker-dealer registered under federal or state securities laws (a “BD”) or a registered representative of a BD (an “RR”);
 - (b) an investment adviser registered under federal or state securities laws (an “RIA”) or an investment advisory representative (an “IAR”); or
 - (c) a fiduciary under Section 3(21) of ERISA or Section 4975(f)(8)(J)(i) of the Internal Revenue Code (a “plan fiduciary”).

Drafting Note: The requirement that a producer be “regulated and acting” as a BD, an RR, an RIA, an IAR, or a plan fiduciary means that a producer who is not explicitly acting in compliance with the relevant comparable standards (as specified in paragraph (4) below) is not eligible for this safe harbor and is subject to compliance with the requirements of this regulation.

- (4) For purposes of this subsection (E), “comparable standards” has the following meaning:

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- (c) With respect to plan fiduciaries, “comparable standards” means the fiduciary duties and all other requirements attendant to such status under ERISA or the Internal Revenue Code and any amendments or successor statutes thereto.