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Submitted Electronically to [jmatthews@naic.org](mailto:jmatthews@naic.org) and [jmccadam@naic.org](mailto:jmccadam@naic.org)

The Honorable Jillian Froment  
Director, Ohio Department of Insurance  
Chair, NAIC Annuity Suitability (A)  
Working Group

The Honorable Doug Ommen  
Commissioner, Iowa Insurance Division  
Vice Chair, NAIC Annuity Suitability (A)  
Working Group

Re: Suitability in Annuity Transactions Model Regulation  
Exposure Draft dated September 17, 2019

Dear Director Froment and Commissioner Ommen:

On behalf of our members, the Insured Retirement Institute (“IRI”)<sup>1</sup> appreciates the opportunity to provide comments regarding the September 17, 2019 draft revisions (the “Exposure Draft”) to the National Association of Insurance Commissioners (the “NAIC”) on the Suitability in Annuity Transactions Model Regulation (#275) (the “Suitability Model”). This letter is intended to supplement the separate comment letter being concurrently submitted to the NAIC Annuity Suitability Working Group (the “Working Group”) by a group of industry associations including IRI (the “Industry Groups Letter”). The comments and recommendations set forth in the Industry Groups Letter are incorporated by reference into this letter. In this letter, we will discuss a simple and common sense change to the Exposure Draft that would give more consumers the opportunity to consider and obtain professional advices as to whether and how an annuity might address their financial situation, insurance needs and financial objectives.

As you know, the Suitability Model currently provides a safe harbor for sales made in compliance with FINRA’s current suitability rules. This safe harbor is an explicit recognition of the fact that FINRA-regulated broker-dealers and their registered representatives (collectively, “BDs”) are subject to

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<sup>1</sup> 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.

standards that meet or exceed those set forth in the current Suitability Model. Absent this safe harbor, however, BDs would have been subject to significantly duplicative rules and requirements, and the added costs associated with developing, implementing, and maintaining policies and procedures to comply with two separate sales practice rules likely would have deprived countless consumers of access to the only type of products that can provide a guaranteed source of retirement income.

BDs and their clients have benefited from the sensible approach taken in the current Suitability Model, but registered investment advisers and investment adviser representatives (collectively, “RIAs”) and their clients have not been so fortunate. RIAs are not regulated by FINRA and therefore cannot rely on the current safe harbor. However, RIAs are held to a fiduciary standard under the Investment Advisers Act of 1940 (the “Advisers Act”). Similarly, financial professionals who work with 401(k) plans, individual retirement accounts (IRAs), and other types of retirement plans often act under a fiduciary standard under the Employee Retirement and Income Security Act (ERISA) or Section 4975 of the Internal Revenue Code.

As policymakers in Washington, DC and across the country have considered ways to enhance the standards owed by financial professionals to their clients, IRI and our members have consistently supported adoption of a best interest standard. For their part, consumer advocacy groups and some members of the Working Group have consistently asserted that the fiduciary standard offers greater protections for consumers than other alternatives, but for purposes of the recommendation provided below, the conclusion is the same – producers who comply with a fiduciary standard will clearly have met or exceeded the best interest standard reflected in the Exposure Draft.

With this in mind, we believe it would be appropriate and sensible to afford the same type of safe harbor treatment to all producers who comply with such standards, and we therefore respectfully request the following proposed modifications to the safe harbor included in the Exposure Draft:

E. Safe harbor.

- (1) ~~Recommendations and sales of annuities~~ Sales made in compliance with comparable standards 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 recommendations and~~ sales of annuities by financial professionals who comply 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 subject to a comparable standard, regardless of whether the particular recommendation or sale is required to 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 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 financial professional’s 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 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.

In connection with these suggested modifications, we would also propose that the following defined terms and definitions be added to the Exposure Draft:

“Comparable standards” means fiduciary or best interest standards imposed under federal or state laws or rules governing the conduct of financial professionals, including but not limited to:

- (1) SEC Regulation Best Interest,
- (2) rules and interpretations adopted by the SEC under the Investment Advisers Act of 1940, and
- (3) standards imposed on fiduciaries under ERISA or Section 4975 of the Internal Revenue Code (including but not limited to regulations adopted thereunder).

“Financial professional” means a producer who is

- (1) a broker-dealer registered under federal or state securities laws,
- (2) a natural person who is a registered representative of a broker-dealer,
- (3) an investment adviser registered under federal or state securities laws,
- (4) a natural person who is an investment advisory representative, or
- (5) any other entity or natural person who provides financial services to retail consumers.

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Thank you again for the opportunity to provide these comments. If you have questions about anything in this letter, or if we can be of any further assistance in connection with this important regulatory effort, please feel free to contact the undersigned at [jberkowitz@irionline.org](mailto:jberkowitz@irionline.org) or 202-469-3014.

Sincerely,



Jason Berkowitz  
Chief Legal & Regulatory Affairs Officer