August 10, 2017

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Dear Chairman Clayton,

On behalf of the National Association of Insurance Commissioners (NAIC)[1], we write in response to your request for comment regarding: "standards of conduct applicable to investment advisers and broker-dealers when they provide investment advice to retail investors." As you are aware, registered investment advisor representatives and broker-dealer representatives can also function as insurance agents and brokers, and sell insurance products such as variable annuities where the SEC and state insurance regulators have shared jurisdiction. Therefore, it is of paramount importance that we work together to coordinate our respective regulatory approaches with respect to these entities and products. Indeed, as a result of past coordination, insurance regulation is currently in harmony with federal and state securities regulation for shared distribution channels. We should seek to maintain that harmony with any changes to our respective standards.

By way of background, the states have developed a conservative financial solvency regulation regime designed to ensure that insurer obligations will be met both today and many years in the future, and a market conduct regime designed to ensure life insurance and annuity customers are treated fairly. Companies, agents, and brokers are required to be licensed and appropriately trained in order to sell life and annuity products. As part of the NAIC's uniform licensing standards, every state requires an individual who wants to sell annuity products to successfully pass their approved examination as well as to meet minimum background and integrity standards prior to beginning their sales career. States also have requirements in place for producers to renew their licenses on an annual basis.

Beyond that, regulators have broad authorities to police the conduct of insurers and producers. Market conduct analysis and examinations occur on a routine basis, but also can be triggered by risk assessments, market trends, data analysis and complaints against an insurer. These investigations and examinations review producer licensing issues, types of products sold by

[1] Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

insurers and producers, producer sales practices, supervision and internal control systems, compliance with filed rating plans, claims handling and other market-related aspects of an insurer's operation. When violations or inadequate controls are found, the insurance department makes recommendations to improve operations and to bring the company into compliance with state law. State regulators have authorities under Unfair Trade Practices laws to sanction misconduct by companies, agents, and brokers including misconduct relating to annuity sales. If a violation is found, an insurer or insurance agent or broker may be subject to civil penalties or license suspension or revocation.

Importantly, state insurance regulators, through the NAIC, have adopted regulations that companies, agents, and brokers selling annuities must comply with in order to ensure the suitability of the annuity for the consumer. Much of this framework is based on NAIC model regulations that have been widely adopted by the states. As you are aware, Congress re-affirmed the primacy of state regulation with respect to fixed indexed annuities in Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Some sales distribution of insurance products is shared with investment advisers, securities agents and dealers, and we strive for an appropriate amount of regulatory consistency and harmony with other regulators across all uses and sales channels. Notwithstanding the existing rules, we acknowledge that there is broad consensus among widely disparate groups for an updated and consistent standard for providing personalized investment advice to retail investors. Accordingly, we have been working to update our suitability standards and sales practices for life insurance and annuities. The NAIC is considering revisions to its suitability rules to potentially include a best interest standard of care and hope to work closely with you as you examine whether to make changes to your regulatory standards.

Through diligent coordination, we believe we can provide effective, clear and compatible standards for consumer protection while at the same time achieving regulatory consistency to avoid excessive compliance burdens on industry. Should you have any questions, do not hesitate to contact Mark Sagat, assistant director financial policy and legislation, at msagat@naic.org or (202) 471-3987 or Heather Eilers-Bowser, financial policy and legislative counsel, at heilersbowser@naic.org, or (202) 471-3973.

Sincerely,

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