



June 10, 2009

Sean Dilweg, Commissioner and Chair, NAIC Suitability of Annuity Sales (A) Working Group
State of Wisconsin, Office of the Commissioner of Insurance
125 South Webster Street
GEF III – 2nd Floor
Madison, Wisconsin 53702

Re: Comments Regarding the Discussion Draft Containing Revisions to the Suitability in
Annuity Transactions Model Regulation dated May 26, 2009

Dear Commissioner Dilweg:

NAVA, Inc.,¹ the Association for Insured Retirement Solutions, respectfully submits these comments regarding the Discussion Draft containing revisions to the Suitability in Annuity Transactions Model Regulation dated May 26, 2009, (the “Model” or “Suitability Model Regulation”) for consideration by the Working Group. NAVA and its members fully support efforts by state and federal regulators to ensure all sales of annuities comply with all applicable requirements, including suitability and full disclosure. Additionally, NAVA is committed to supporting proper sales supervision, record keeping and training among all of its members. Included in NAVA’s stated mission is the promise to “protect consumers by encouraging adherence to the highest ethical standards.”

NAVA is committed to active involvement in the efforts in every state to secure adoption of the current NAIC Model Suitability in Annuity Transaction Model, NAIC Annuity Disclosure Model and NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities. We stand ready to provide testimony and mobilize the support of our member companies — insurance companies, broker dealers, as well as their financial advisors, and investment management firms.

NAVA previously provided the Working Group the attached comment letters dated December 3, 2008, December 4, 2008 (Joint Letter submitted by NAVA, ACLI, IMSA, and NAIFA), and December 19, 2008. In sum, based on the many reasons outlined in those letters and this letter, we strongly urge the Working Group not to alter the current NAIC Model, except to the extent revisions are needed to

¹ NAVA is a not-for-profit organization dedicated to the growth and understanding of annuity and variable life insurance products. NAVA represents all segments of the annuity and variable life industry with over 300 member organizations including insurance companies representing over 85% of the market, distribution firms, banks, investment management firms, and industry service providers.

incorporate the requirements of recently adopted FINRA Rule 2821, with modifications that may be needed to apply the requirements to other types of annuities. As noted in our previous letters, firms following the NAVA Straight Through Processing (STP) Standards, which have been accepted in 29 states, have already agreed to adhere to the requirements of the rule, as applicable for all annuities.

Consistent with and as set forth in our previous comment letters, NAVA's position is based on the following reasons:

1. **The current Model provides the necessary requirements for regulators to protect consumers from unsuitable sales.** The current model law was based on FINRA Rule 2310 and FINRA has been regulating suitability of product sales since the 1930s. Therefore, FINRA has enormous experience with suitability regulation and enforcement, and recently sought and obtained approval of changes to its suitability rules relating to deferred variable annuities through Rule 2821. FINRA did not find it necessary to seek the type of dramatic and prescriptive changes contained in the Working Group's Discussion Draft. While we understand state regulators are autonomous in terms of their regulatory authority, it is very common for sister regulatory organizations to look to other state and federal counterparts for guidance on issues about which they do not have as much experience or expertise. We urge state regulators to partner with one another and FINRA to achieve uniformity in our national suitability requirements, as well as effective and consistent enforcement of those laws.
2. **The Disclosure Draft, if fully adopted, would result in a dramatic restructuring of the long standing regulatory framework that governs annuity sales [FINRA Regulation, NAIC Suitability Model (2006) and Rule 2821] and necessitates large scale changes in existing systems and procedures for both insurers and distributors.** This includes what we see as elimination of the ability of insurers to contract with their brokers-dealers to perform the suitability and supervision of distributors, as is contemplated by FINRA's rules, and duplication of existing supervision systems and processes. NAVA believes that such restructuring is unnecessary and inappropriate and that the industry should not be subject to the very prescription requirements in the Disclosure Draft. Companies should be able to and currently do tailor their compliance systems to meet the needs of their companies, considering a number of factors, including distribution methods, customer and product focus, organizational structure and other key items. Consequently, NAVA has led an industry initiative, creation of the Straight Through Processing (STP) Standards, which meet and exceed the NAIC Model standards and incorporate the requirements of Rule 2821. Moreover, although Rule 2821 applies only to deferred variable annuities, for purposes of the NAVA STP Standards, sales of other annuity contracts not subject to the rule would nevertheless comply with its principles in order to achieve uniform standards for all types of annuities. We strongly believe widespread modifications to the Suitability Model Regulation completely changing the current framework and requiring insurers to develop duplicative systems and processes will result in a decrease in efficiency and effectiveness in ensuring suitable annuity recommendations and more costs for consumers.

3. **Limited state regulatory resources should be on focused adoption and enforcement of the current Model in all states.** Given the current model provides the necessary requirements for regulators to protect consumers, we urge the Working Group to focus the limited resources of state insurance regulators on adoption and enforcement of the current Model, which has been adopted in 35 states, as well as the Disclosure and Senior Designations Models, rather than working to review and comment on new proposals issued by state regulators, likely to be debated for a two to four year period of time.
4. **Industry compliance and legal resources should be devoted to compliance with the current Model and implementation of the new FINRA Rule 2821.** Given the current model provides the necessary requirements for regulators to protect consumers, on balance, we believe company resources would be best focused on working to support adoption of the three NAIC consumer protection models in all states, as well as designing and operationalizing systems to comply with Rule 2821 and the current Model as it is adopted state by state. These valuable consumer protection resources should not be diverted to reviewing and commenting on new proposals not having widespread support among regulators and again, likely to be debated for a two to four year period of time.
5. **The Model was only recently adopted in most of the 35 adopting states, very little enforcement activity has occurred, and States and companies should be given time to work with the current Model before any additional revisions are proposed.** If the Discussion Draft were adopted now, a likely and very concerning scenario exists where regulators will want to revisit the model after working with it for several years, creating the real possibility that companies will be required to comply with multiple conflicting model laws: NAIC Model Law (2006), NAIC Model Law 2, NAIC Model Law 3, other state specific laws, and Rule 2821. This would be enormously and unnecessarily problematic and costly for our members and their customers.
6. **Even if the Discussion Draft were adopted by the Working Group, then the NAIC "A" Committee, and then Executive and Plenary, given other priorities and the lack of need, it is unlikely most states will revisit the Model and then lack of uniformity will exist.** As stated above, the lack of uniformity in the suitability laws and enforcement consistency would be enormously problematic and costly for our insurance company and broker dealer member companies as well as consumers. We urge state regulators to partner with one another and FINRA to achieve uniformity in the suitability requirements, as well as effective and consistent enforcement of those laws.
7. **If an insurance company contracts with its broker dealers or other parties to perform the suitability review, the current Model does not absolve the company of responsibility for suitability compliance.** Under FINRA's rules, it is always contemplated that the insurer will contract with its broker dealers to perform the suitability review. In these circumstances, the NAIC Model

requires the insurance company to obtain a certification from a senior management member at the broker dealers (who holds federal securities licenses and a state life and annuity agent's license in most, if not all cases), stating that the broker dealer is "performing the required functions" AND the insurer must have a reasonably designed compliance system to identify brokers dealers "for a review to determine whether the [broker dealers] are performing the required functions." The use of NAVA's STP Standards is one way insurers can comply with this requirement. These NAVA STP standards and systems require the companies to provide compliance reports to assist the distributors in fulfilling their obligations to supervise their agents and registered representatives and to help both the insurers and the distributors meet their obligations under Section 6 of the current Suitability Model Regulation,² as well as federal regulations.

8. **Focusing on adoption and enforcement of the three NAIC consumer protection models will demonstrate to Senator Herb Kohl, the United States Senate Special Committee on Aging, and the entire Congress that state insurance regulators can adequately perform the necessary consumer protection activities they expect.** During NAVA's Government and Regulatory Affairs Conference this week on June 9, 2009, in response to a comment questioning the need to rewrite the current NAIC suitability model versus focusing on adoption of the current model and enforcement activities, Jack Mitchell, Chief of Investigations, Senate Special Committee on Aging, stated:

"I think one of our concerns about suitability issues is not in terms of rewriting and revising it, as much as we didn't think that those minimum standards had proliferated to enough states, a sufficient number of states. That was one of our key problems here We found something that was regulated effectively, but only in a large handful of states, and in many other states there was virtually no regulation It was a confusing patchwork that we thought needed some federal intervention."

Adoption and enforcement of the current Model will demonstrate how state regulators can adequately perform the necessary consumer protection activities related to suitability of annuity sales.

NAVA's previous comment letters outline additional technical, operational and legal problems with the Discussion Draft, and I refer to those attached letters for additional comments. Based on the reasons set forth in this letter and the problems outlined in NAVA's previous comment letters, we strongly urge the Working Group not to alter the current NAIC Suitability Model, except to the extent revisions are needed to incorporate the requirements of recently adopted Rule 2821, with modifications that may be needed to

² Section 6 permits insurers to contract with a third party to establish and maintain a system of supervision with respect to producers under contract or employed by the third party. In so doing, the insurer must, among other things, "make reasonable inquiry to assure that the third party is performing the functions required", and including "based on reasonable selection criteria, periodically select third parties ... for a review to determine whether the third parties are performing the required functions."

Letter to Commissioner Sean Dilweg

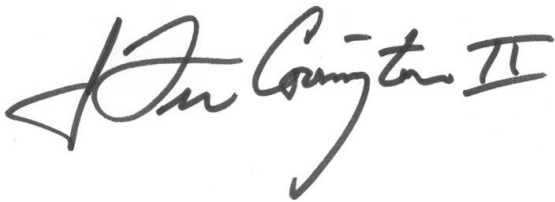
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apply the requirements to other types of annuities. As noted above, firms that are following the NAVA STP Standards have already agreed to adhere to the requirements of the rule, as applicable, for all annuities.

NAVA appreciates the opportunity to provide these comments regarding the Discussion Draft. Please contact me if you have questions or need additional information.

Best regards,

A handwritten signature in black ink that reads "J. Lee Covington II". The signature is written in a cursive style with a large, stylized initial "J" and "C".

J. Lee Covington II

Senior Vice President and General Counsel

cc: Kim Shaul, Deputy Commissioner, Wisconsin Office of the Commissioner of Insurance
All members of the Suitability of Annuity Sales Working Group
Other Interested Parties
Jolie Matthews, NAIC Senior Health & Life Policy Advisor & Counsel