



December 3, 2008

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

Dear Commissioner Dilweg:

NAVA, Inc.,<sup>1</sup> the Association for Insured Retirement Solutions, respectfully submits these comments on the Discussion Draft proposing modifications to the NAIC Suitability in Annuity Transactions Model Regulation (the “Suitability Model Regulation”). NAVA and its members fully support efforts by state and federal regulators to ensure that 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.”

It is not our intent at this time to provide detailed comments on all of the provisions of the Discussion Draft which, if fully adopted, would result in a dramatic restructuring of the current regulatory framework that governs annuity sales and necessitate 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 delegate suitability and supervision to third party distributors and duplication of existing supervision systems and processes. NAVA believes that such restructuring is unnecessary and inappropriate and further believes that a NAVA led industry initiative, which incorporates suitability standards, addresses many of the issues relating to suitable sales of annuities. Below we discuss the NAVA initiative and our recommendations.

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<sup>1</sup> 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, distribution firms, banks, investment management firms, and industry service providers.

To take advantage of advances in technology, NAVA has spearheaded the Straight-through Processing (STP) Standards initiative, a comprehensive set of standards establishing an industry accepted process for doing new business submissions for annuities in a paper-less, all electronic format - a compliant, rigorous process that allows for interoperability and uniformity between insurers and distributors. Our industry efforts will lead to the elimination of proprietary ways of doing business and the adherence to singular operating procedures for all types of annuities as the most meaningful way of addressing concerns of inappropriate sales practices. STP includes five suitability standards which can help insurers and annuity distributors better identify and address potentially unsuitable sales.

It is important to restate that NAVA's membership includes both insurers and distributors and many of the leading firms in both constituencies have pledged to implement the STP Standards, including all of the suitability standards. The industry is in the process of a phased implementation of the standards and a rollout of STP to all state departments of insurance. Our intent is for the standards to be utilized by all distribution channels. However, to date, the standards have only been vetted and approved by wirehouses, large broker-dealers and independent FINRA agencies. A copy of the companies making up the STP Executive Council is attached.

The NAVA STP Standards on suitability go much further than what is currently required by the Suitability Model Regulation and incorporate the requirements of NASD Conduct Rule 2821. Moreover, although Rule 2821 applies only to deferred variable annuities, for purposes of the NAVA STP Standards, sales of other annuity contracts that would not be subject to the rule would nevertheless comply with its principles in order to achieve uniform standards for all types of annuities. The NAVA suitability standards are based on the premise that the insurer would delegate to the distributor the day-to-day oversight of the suitability of annuity transactions, which is permitted under the current Suitability Model Regulation. However, the insurer could so delegate only if the distributor adopted and implemented written policies and procedures in accordance with the standards which would include, among other things conformance with the principles of NASD Rule 2821 for all annuity transactions.

The NAVA STP Standards also require insurers to provide their distributors with 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,<sup>2</sup> as well as federal regulations.

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<sup>2</sup> 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", including "based on reasonable selection criteria, periodically select third parties ...for a review to determine whether the third parties are performing the required functions."

The reports utilize trend analysis and provide detailed information of each distributor's business with that insurer regarding a number of factors such as the age of the purchaser, share class, benefit election, subaccount allocation, replacements and surrenders. When insurers provide the reports to distributors, they will point out any activities that are outside of their anticipated normal ranges for that particular item. In turn, the distributors are expected to provide an explanation of the variance or undertake remedial steps. Distributors will also use such reports to monitor the sales practices of their producers in conformance with both state and federal laws.

While these reports were created initially for use with electronic transactions, they can be used as well with regard to sales involving traditional paper applications. Sample insurer compliance reports and the NAVA STP Insurer Compliance Reports Specifications, Principles and Guidelines explaining the purposes, goals and uses of the reports were previously provided to the Working Group on October 29, 2008, and NAVA has offered to provide a demonstration to the Working Group.

The Discussion Draft would eliminate the ability of insurers to delegate supervisory responsibility to third party distributors, who already maintain suitability and supervision procedures. Instead, the Discussion Draft would require insurers to create and maintain a second layer of supervisory systems and processes, including an extensive supervision organization and a training program for insurance producers. In our opinion, this would result in an inefficient and ineffective structure.

Elimination of the ability to delegate is inconsistent with the way that annuities are presently sold and regulated. The business model of how annuities are sold has changed significantly over the past ten years or so. Today, the overwhelming majority of annuities are sold by individuals who are not direct employees of the issuing insurance company. In 2007, only 30% of all variable annuities, and only 14% of all fixed annuities, were sold by captive sales agents.<sup>3</sup>

The Suitability Model Regulation, adopted in one form or another in 34 states, imposes a suitability obligation patterned after NASD Rule 2310 on insurance producers, or insurers where no producer is involved, for all types of annuities, and, as discussed, permits delegation of suitability to the distributor. Federal regulation of variable annuities similarly places the obligation to recommend suitable products and supervise sales on the broker-dealer and its associated persons or registered representatives.

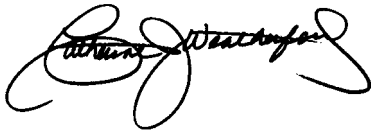
Insurers and distributors have relied on a long-standing framework of federal and state regulation in developing their respective supervision systems. We strongly believe that widespread modifications to the Suitability Model Regulation that would completely change the current

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<sup>3</sup> NAVA 2008 Annuity Fact Book, at 50 and 103.

framework and require insurers to develop duplicative systems and processes will result in a decrease in efficiency and effectiveness in ensuring suitable annuity recommendations. Therefore, we strongly urge the Working Group to not alter the current provision that permits delegation of suitability review to third parties, with periodic insurer monitoring of the third parties. To the extent that the Working Group feels that the Model needs strengthening, we suggest that the requirements of NASD Rule 2821 could be incorporated in lieu of the present incorporation of Rule 2310, with modifications that may be needed to 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine J. Weatherford". The signature is fluid and cursive, with a large loop at the end.

Catherine J. Weatherford  
President & CEO

cc: Kim Shaul, Deputy Commissioner, Wisconsin  
All members of the Suitability of Annuity Sales Working Group  
Other Interested Parties

STP Executive Council  
as of July 2007

<b>Coalition Members</b>
<b>CARRIERS</b>
AEGON Insurance Group
AIG/SunAmerica/VALIC
Allianz Life Insurance Co
AXA Financial
Fidelity Investments Life Insurance Co
Genworth Financial
Guardian Life
Hartford Life
ING U.S. Financial Services
Jackson National Life
John Hancock Financial Services
Lincoln Financial Group
MassMutual Financial Group
MetLife
Nationwide Financial
New York Life
Pacific Life Insurance Company
Principal Financial Group
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