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Submitted electronically to jmatthews@naic.org

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Re: Supplemental List of Parking Lot Issues

We want to share the attached list of "parking lot" issues which we prepared for purposes of identifying some of the larger issues that remain open for discussion in connection with the model suitability regulation.

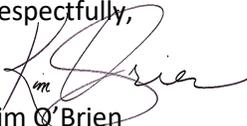
FACC commends Director Froment for coming up with this idea of a "parking lot" in order to identify important issues that could be put on the side and taken up at a later point in the process. However, we do not believe any such list of issues was ever formally assembled or distributed so we thought it might be helpful to prepare such a list and share it with the NAIC and other interested parties.

We recognize the working group may believe some of these parking lot issues were addressed to some extent in prior sessions but our view is these larger issues have not yet been fully considered and resolved and have kept them on the list in light of their importance and need for further review.

We wish to emphasize the list is not exhaustive and also that working group members or other interested parties may believe there are additional issues – beyond these – in need of further review and attention. We already shared a version of this list and discussed it with certain members of the working group but thought it might be helpful at this point in the process to share the list more broadly.

FACC would welcome the posting of this list on your website so it may be shared with the Suitability Working Group, interested parties and other stakeholders.

Thank you for your time and efforts, as always.

Respectfully,

Kim O'Brien

| General Issues | |
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| 1. Making the Rule Objective | Consider comment letters; includes defining what is meant by “diligence, care, skill, and prudence.” |
| 2. SEC/FINRA Safe Harbor | Consider impact on level playing field especially if (unlike suitability standards) there will be substantive differences between securities and insurance requirements. |
| 3. Impact on Harkin Amendment | Need to understand impact; consider whether NAIC model separate from Suitability would preserve Harkin protections. |
| 4. Model Law versus Model Rule | Analyze and consider need for legislative action. |
| 5. Other Exemptions | E.g., annuities not individually solicited and fee-based annuities; need to consider impact on level playing field. |
| Definitions – Section 5 | |
| 6. Material Conflict of Interest | Need for clear cut definition; what must be disclosed; consider excluding compensation other than non-cash compensation and other non-commission incentives. |
| 7. Lack of definition of Best Interest | Should there be a definition; should term be removed; how does one evaluate whose interests have been put first; highly subjective standard that could be removed entirely. |
| 8. Other definitions | E.g., definition of “intermediary” is too broad; definition of “risk tolerance” meanders into NGE disclosure; definition of “existing assets” spills into investments. |
| Best Interest Obligation – Section 6 A | |
| 9. Deemed to Comply | Good clarification contained in Iowa proposal so compliance with obligations definitively satisfies standard. |
| Care Obligation – Section 6 A (1) | |
| 10. Standard of Care | Whether to remove “prudence”; what is meant by “diligence, care, and skill”; need for objectivity; address and avoid litigation trap; see definition of best interest above. |
| 11. Best Suited vs. Best Interest | Best Suited introduces new concept; what does it mean; how is it measured. |
| 12. Over Life of the Product | Introduces ambiguity; evaluation of any product takes into account issues of maturity, non-guaranteed elements, surrender schedule, and such; what is intended; how to avoid future second guessing. |
| 13. Range of Products | What ranges and types of products must be considered by agent; products within agent’s portfolio vs. products within agent’s licensure vs. products outside agent’s sphere; clarity needed. |
| 14. Ordinary Producer | What standard is used to judge agent compliance; need to avoid holding insurance agents to standards applicable to securities agents or fiduciaries. (See FACC Comment on Section 6 A (1) (d)) |
| 15. Explicit No Fiduciary Duty | Need for clarity the rule creates no fiduciary obligation. |
| Conflict of Interest– Section 6 A (2) | |
| 16. Avoid or Manage Conflict of Interest | Need for specificity; analysis of feasibility; sufficiency of disclosure. |



| Disclosure– Section 6 A (3) | |
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| 17. Compensation Disclosure – Producers | What must be disclosed about products sold; what disclosure is required for products not sold. |
| 18. Disclosure of intermediaries | Impact/implications of including intermediaries or other producers; how would this be done; does it include intermediaries for products not sold; what kinds of information on compensation and conflicts. |
| 19. Non-Cash Compensation | Big issue that has not been discussed in any detail; compare to FINRA requirements; what is included; how should it be disclosed. |
| 20. Disclosure Template | Consider need for template for disclosure of compensation, non-cash compensation, and conflicts; similar to client relationship summary prepared by SEC; consider FACC draft. |
| Documentation– Section 6 A (4) | |
| 21. Basis of Recommendation | E.g., oral versus written; clarify exactly what agents must keep; whether company suitability forms are sufficient; clarify that reasonable disclosure of primary basis suffices. |
| 22. Nothing Requires Securities License | Rule must be clear that all requirements can be satisfied without a securities license; i.e., insurance-only agents will not be compared to securities agents; i.e., insurance-only agents can perform analysis and provide advice without being investment advisers. |
| Supervision – Section 6 C | |
| 23. Supervision – Own Agents, Products & Compensation Only | Insurance companies can only supervise their own agents, products, and compensation; clarify limitation on supervision obligation and liability; avoid anti-trust issues; carrier duties to oversee patterns or practices should be spelled out. |

* FACC created this supplemental list of parking lot issues list to help identify issues it believes to be still open and unresolved by discussion and consensus agreement. The list is not exhaustive and may be updated. FACC remains opposed to the best interest rule proposal as articulated in its comment letters to the NAIC. Nothing herein should be construed to the contrary. FACC maintains better disclosure is needed for compensation and conflicts of interest but proposals establishing a supposedly higher standard of care (i.e., best interest) are too subjective, unworkable, and tantamount to fiduciary duty.