



May 31, 2018

Thank you, Chairman Cameron, Vice-Chairman Ommen, and Committee Members. Thank you for this opportunity to comment.

I am Kim O'Brien representing the Fixed Annuity Consumer Choice, or FACC, Campaign. We are an alliance of insurance agents, independent marketing organizations, insurers, and industry advocates seeking to protect the availability of fixed annuities by ensuring regulators work to align any new regulations with the fixed annuity independent agency system. We formed as a group to address concerns with the Department of Labor rule, but now that the 5th Circuit has ruled to vacate, we have turned our attention to other regulatory initiatives, including the work of the NAIC.

Let me add that I have personally been involved with fixed annuities since 1990 - and in particular fixed *indexed* annuities - almost from their inception some 23 years ago. From where I sit, I am deeply concerned that many of these proposals calling for fiduciary duty and/or best interest could adversely affect the availability of fixed annuity products for consumers and more generally harm the overall financial services marketplace by driving agents from the marketplace, squelching innovation, and ultimately limiting the incredible spectrum of products available today to consumers.

I trust most or all of you have already read our comment letter so I will try not to repeat ourselves too much. Our simple message is the NAIC should "hit the pause button" on any best interest proposal at least until it has been determined how such proposals would truly impact insurance product distribution regulated by state insurance departments. We fear inertia is carrying these proposals forward without enough meaningful analysis about what it is the NAIC hopes to accomplish, what the real agenda is behind these proposals, and what sales the NAIC thinks occur today that should somehow be prevented under such regulations. We are not "chicken little" saying the sky is falling but we are here to say that many of the problems found in the DOL rule are found as well in the best interest proposals being considered by the NAIC.

We submit "best interest" - which is really equivalent to a fiduciary duty - does not fit the insurance industry. Best interest and its close cousin fiduciary duty - which is what all these proposals amount to even if they avoid the words themselves - may make sense for services delivered through the securities industry but the securities industry is different. It has a very different delivery system and provides qualitatively different products and services.

These concepts simply do not fit insurance which first and foremost is a product, not a service, and which notably is a guaranteed insurance product backed by an insurance company. Taking concepts like best interest and fiduciary duty, or whatever it is ultimately called, which never were intended to apply to the sales of insurance products and now applying them based on some ill-defined desire for a uniform standard is not warranted.



We want to be clear - nobody is saying the NAIC should sit idle or do nothing. We believe there is room for improvement to help consumers better understand what products and services are offered by insurance agents and how agents are compensated. If there is confusion in the marketplace or consumers need more transparency to see what motivates agents, then let's work on that together.

Instead, we ask the NAIC to turn its attention to constructive regulatory improvements in areas of disclosure and compensation practices. We suggest looking to the existing NAIC Annuity Disclosure Model which may be the right vehicle on which to engraft regulations that truly help consumers understand the agent or advisor's role, compensation arrangements, licensing authority and potential conflicts of interest so that the consumer is in the most informed position to determine if a recommendation is in their own best interest. Improvement in those areas would be no small task but would produce real bang for the regulatory buck.

We submit that the kind of disclosures we are suggesting deserves fuller and more careful treatment than has so far been accorded to it in the latest proposals.

Many are promoting "best interest" purportedly to create a level playing field with the securities industry. But in fact, it will have the exact opposite effect for at least three reasons.

First, we do not have FINRA arbitration to mitigate the impact of this new amorphous standard of care. Since the proposed drafts avoid defining "best interest," it will no doubt be litigated, and in our case all affected parties including consumers will be left with expensive and lengthy private actions in state courtrooms.

Second, our distribution system and our products are designed differently. Best interest is designed for the securities industry where a single firm supervises an agent across all sales. Our agents are independent contractors representing multiple companies and cannot be supervised by one company with respect to product recommendations or compensation when derived from multiple insurers.

Third, not all agents who sell annuities also offer investment advisory services. This insurance-focus adds a level of expertise and product specialty that is advantageous to consumers. Frankly we think our products are more versatile, more conservative, and better suited for our clients. But with a nebulous "best interest" standard will we always be second guessed because we are not investment advisers meeting somebody's idea of what is considered "prudent" or "loyal".

As we said in our comment letter, laws cannot mandate good behavior, but unrealistic legal standards can promulgate a regulatory environment hostile to independent agents and create a platform for ruinous litigation. We urge the NAIC to step back and reconsider its approach here.

Thank you, again, for the opportunity to present our position and for your consideration.