August 7, 2017

The Honorable R. Alexander Acosta
Office of Exemption Determinations
EBSA (Attention: D–11933)
U.S. Department of Labor
200 Constitution Avenue N.W. Suite 400
Washington, DC 20210

Re: RIN 1210–AB82 Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

Dear Secretary Acosta,

On behalf of the National Association of Insurance Commissioners (NAIC)[1], we write today in response to the Request for Information (RFI) regarding the U.S. Department of Labor's Fiduciary Rule published in the July 6, 2017 issue of the Federal Register. At the outset, we strongly encourage the Department of Labor (DOL) to coordinate closely with the NAIC as you review and consider any changes to the Fiduciary Rule.

While the DOL has shared jurisdiction with the states with respect to insurance products sold through ERISA plans, states have regulatory responsibilities with respect to the entire market for such products, including disclosure requirements, professional standards of conduct for agents, and supervisory controls. Some sales distribution of insurance and retirement products is shared with investment advisers, securities agents and dealers, and, in fulfilling the congressional intent of Section 989j of the Dodd-Frank Act, we strive for an appropriate amount of regulatory consistency and harmony with other regulators across all uses and sales channels. Coordination and consultation with state and federal securities regulators with the DOL at this critical juncture would ensure that our approaches are as consistent and compatible as possible to provide effective, clear standards for consumer protection, while avoiding excessive compliance burdens on the industry. We also hope we can be a resource to the DOL as it evaluates the existing rule, how it fits with the existing regulation of insurance products and agent sales, and the impact of the rule on the insurance sector and retirement product purchasers.

Set forth below are answers to specific questions within the RFI relating to regulatory authorities over life and annuity products.

[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.

How would advisers be compensated for selling fee-based annuities? What regulatory filings are necessary for such annuities?

Compensation can be determined based on a one-time percentage of the annuity premium deposit, or small percent paid periodically over a number of years, or a combination of the two methods. The compensation method and percentage applied varies by company, annuity payout option, age of the buyer or other criteria, depending on the product design of the retirement product.

Insurers are required to make regulatory filings relating to their annuity products with state insurance regulators. Companies are required to disclose the guaranteed maximum fees and charges to which the policy is subject. Sales compensation is usually paid from those charges.

All annuity contracts, including fee-based annuity contracts, must comply with applicable state laws including those addressing, for example, required policy provisions, prohibited policy provisions, permitted exclusions and prohibited exclusions, policy format requirements, readability requirements and supporting documentation requirements, such as actuarial memorandum requirements. Generally, the policy, application, riders and endorsements are required to be submitted in the filing along with the actuarial documentation to demonstrate compliance with nonforfeiture requirements. Some states will perform prior review and approve the product for sale in advance ("prior approval") while other states permit insurers to file the product and sell it unless the product filing is disapproved by the regulator ("file and use.") In addition, 44 states and Puerto Rico, representing more than 75% of premium volume, are part of an Interstate Insurance Compact (Compact). The Compact established a multi-state public entity, the Interstate Insurance Product Regulation Commission (IIPRC), which serves as an instrumentality of the Member States. The IIPRC stands in the shoes of the compacting states and serves as a central point of electronic filing for certain insurance products, including life insurance, annuities, disability income, and long-term care insurance to develop uniform product standards, while at the same time affording a high level of protection to purchasers of asset protection insurance products.

If the Securities and Exchange Commission or other regulators were to adopt updated standards of conduct applicable to the provision of investment advice to retail investors, could a streamlined exemption or other change be developed for adviser that comply with or are subject to those standards? To what extent does the existing regulatory regime for IRAs by the Securities and Exchange Commission, self-regulatory bodies (SROs) or other regulators provide consumer protections that could be incorporated into the Department's exemptions or that could serve as a basis for additional relief from the prohibited transaction rules?

We believe such an exemption could be developed, but would require careful consideration of existing standards and supervisory systems. For example, if the SEC were to adopt revised standards of conduct for advisers or FINRA were to adopt best interest standards for registered representatives, those standards would involve supervisory systems that are generally recognized by state insurance regulators as complementary. Indeed, insurance regulation is currently in harmony with federal and state securities regulation for shared distribution channels. In addition, consumer protection is the hallmark of the state-based insurance regulatory system, and a robust regulatory framework upon which an exemption could be based, already exists with respect to the sale of insurance and annuity products. In particular, state insurance regulators are in close proximity to the unique aspects of their states and consumers and are able to respond relatively quickly to issues when they arise.

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 that 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 any 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, complaints, types of products sold by 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 the 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. In fact, in 2010, Congress re-affirmed the primacy of state regulation in Section 989j of the Dodd-Frank Act with respect to fixed indexed annuities. Much of this framework is based on NAIC model regulations that have been widely adopted by the states. The NAIC's *Suitability in Annuity Transactions Model Regulation* (#275) sets forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products to ensure the insurance needs and financial objectives of consumers are appropriately met at the time of the transaction. The *Annuity Disclosure Model Regulation* (#245) establishes standards for specific product understanding and the disclosure of certain information about annuity contracts to protect consumers and foster consumer education. The *Life Insurance and Annuities Replacement Model Regulation* (#613) provides regulatory oversight of insurer and producer annuity and life insurance replacement activities. The *Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities* (#278) establishes standards for the use of senior-specific certifications and professional designations by insurance producers in the sale of life insurance and annuities. The NAIC also provides consumers information and issues alerts relating to potentially abusive sales practices in the sale of annuities to seniors.

Market analysis and risk-based consumer protection by state insurance regulators, and insurance sector compliance, has significantly increased since the passage of Section 989j. While reconsideration of insurance adviser standards of conduct is warranted, the NAIC has a strong interest in avoiding inconsistent market regulation across the business of insurance. 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 in the process of considering revisions to its suitability rules to potentially include a best interest standard of care. Should the Department of Labor decide a streamlined exemption could be developed for "advisers that comply with or are subject to updated standards of conduct applicable to the provision of investment advice," we believe both our existing regulatory framework as well as our ongoing work to enhance those authorities would provide an appropriate basis for such an exemption. We strongly encourage the DOL to coordinate with us as we seek to update these rules and we appreciate that the DOL has already agreed to this cooperation in a meeting of the NAIC working group tasked to evaluate our existing standards.

Conclusion

Thank you for the opportunity to comment on this Request for Information. We hope to work closely with you moving forward. Through coordination we can ensure consumers are protected while at the same time achieving regulatory consistency to reduce burdens on industry as they seek to comply with our respective regulatory frameworks. 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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