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Sent by electronic mail

The Honorable Barbara Richardson
Commissioner of Insurance
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, Nevada 89706

Re: LCB File No. R165-18 – Annuity Suitability and Best Interest

Dear Commissioner Richardson:

The following comments are submitted on behalf of the American Council of Life Insurance (ACLI)¹ to follow up on previous written and oral comments regarding the above-referenced Proposed Regulation, issued by the Nevada Division of Insurance (Division) on October 15, 2018 (Proposal).

As in our previous comments, the ACLI respectfully urges the Division to revise the Proposal to conform with the current (2015) version of the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions (Suitability) Model Regulation to the greatest extent possible. This is necessary to further the overarching goal of uniformity and consistency in suitability, and ultimately best interest, standards from state to state and across regulatory platforms.

Accordingly, the following comments focus on key provisions in the Proposal that deviate from the current Suitability Model Regulation, and explain why, in our respectful view, these provisions should be modified or eliminated to make the Proposal conform with the current Suitability Model Regulation. The following do not include explanations why provisions in the Proposal that relate to a best interest standard of care and track an early draft of proposed revisions to the Suitability Model Regulation, should be modified or eliminated. The rationale for these changes was addressed in both in the 11/7/18 joint trades letter and our oral comments regarding the Proposal. It is our understanding the Division recognizes the need for these changes. The following also does not include specific recommended changes to the Proposal. Later this

¹ The ACLI is a national trade association whose member companies provide life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, dental and vision and other supplemental benefits. There are 245 ACLI members licensed in Nevada and they account for 100% of new annuity considerations.

week, ACLI will join other insurance trade associations in submitting a joint trades “mark-up” with specific proposed changes.

Key provisions in the Proposal (other than those relating to best interest) that deviate from the current Suitability Model Regulation are:

Section 12, Paragraphs 4(d)(2) and 4(d)(3) – Required Considerations in Connection with the Replacement or Exchange of an Annuity

Paragraph 4(d)(2) of the Proposal would require consideration of whether, in the case of an exchange or purchase of an annuity, the consumer “would benefit from product enhancements and improvements and the replacing product would provide a *substantial* financial benefit to the consumer ...” (*Italics added.*) By contrast, corresponding Section 6.A.(4)(b) of the current Suitability Model Regulation requires the producer or insurer where no producer is involved to take into consideration whether “[t]he consumer would benefit from product enhancements and improvements.”

The legal meaning of the term “substantial” in the context of Paragraph 4(d)(2) is unclear. The term is subject to subjective interpretation. Accordingly, ACLI urges modification to Paragraph 4(d)(2) of the Proposal to track the corresponding provision in the current Suitability Model Regulation by eliminating the phrase “and the replacing product would provide a substantial financial benefit to the consumer over the life of the product,” or, at a minimum, by simply eliminating the word “substantial.”

Paragraph 4(d)(3) of Section 12 of the Proposal requires consideration of whether the consumer has transacted another exchange or replacement, particularly within the preceding 60 months, as opposed to within the preceding 36 months, as provided in corresponding Section 6.A.4(c) of the current Suitability Model Regulation. The additional consumer protection that might be derived from this deviation in the Proposal from the Model requirements is questionable. For purposes of uniformity and consistency, ACLI urges modification of this paragraph of the Proposal to track the Model requirement, to refer to another exchange or replacement, particularly with the preceding 36, rather than 60, months.

Section 12, Paragraph 8 - Requirements of Section 12 in addition to the Requirements of a Producer of Insurance under NRS 90.575

Paragraph 8 of Section 12 states: “The requirements of this section are in addition to any applicable duties and requirements with which a producer of insurance must comply pursuant to NRS 90.575.” This provision gives rise to significant concern. It inappropriately incorporates the fiduciary requirements of NRS 90.575 and NRS 628A.020 into the Proposal.

NRS 90.575 states: “A broker dealer, sales representative, investment adviser or representative of an investment adviser shall not violate the fiduciary duty toward a client imposed by NRS 628A.020. NRS 628A.020 states: “A financial planner has the duty of a fiduciary toward a client ...” NRS 628A.010 expressly excludes from the definition of “financial planner” a “producer of insurance licensed pursuant to chapter 683A of NRS ...” As a result, NRS 90.575 does not apply to producers of insurance; and the requirements of NRS 90.575 are inappropriately incorporated into the Proposal. Accordingly, ACLI respectfully strongly urges deletion of paragraph 8 of Section 12.

Moreover, existing provisions in the Nevada Securities Code and Insurance Code respectively exclude all fixed insurance, endowment and annuity contracts from the definition of “security,”² and grant the Insurance Commissioner sole authority to regulate the issuance and sale of variable annuities.³ In view of these laws, ACLI urges the Division to seek to persuade the Securities Division to acknowledge in its regulation to implement NRS 90.575 that the exclusive requirements applicable to recommendations of variable and other annuities are provided in the Division of Insurance’s annuity suitability regulation.

Section 13, Paragraph 2 – Producer Establishment of a System of Supervision

Paragraph 2 of Section 13 provides detailed requirements for the establishment of a system of supervision by producers of insurance. There are no corresponding requirements in the current Suitability Model Regulation. Paragraph 2 of Section 13 gives rise to significant concern. It raises many questions, such as: (i) how a producer could supervise his or her own compliance or suitability determination; (ii) how a producer’s system of supervision will interface with (and not duplicate or conflict with) an insurer’s supervision system; (iii) how a producer will determine which insurer/insurers is/are his or her insurer/insurers; (iv) whether the producer is required to have different systems for different insurers; and (v) how a producer could actually achieve the compliance of an insurer with the requirements of the Proposal. Importantly, it is questionable whether consumer benefits will be enhanced by possibly confusing and duplicative insurer and producer systems of supervision. In view of the above, ACLI respectfully strongly urges deletion of paragraph 2 of Section 12.

We appreciate the opportunity to submit these comments and the Division’s continued consideration of our concerns. We would be glad to answer questions relating to any of the above.

Sincerely yours,



John W. Mangan

cc: Roberta Meyer, Vice President and Associate General Counsel
Mike Hillerby, Kaempfer Crowell

² N.R.S. 90.295

³ N.R.S. 688A.390 (4) (2015)