

**COMMONWEALTH OF MASSACHUSETTS**  
**Office of Consumer Affairs and Business Regulation**  
**DIVISION OF INSURANCE**

1000 Washington Street, Suite 810 • Boston, MA 02118-6200  
(617) 521-7794 • Toll-free (877) 563-4467  
<http://www.mass.gov/doi>

**CHARLES D. BAKER**  
GOVERNOR

**KARYN E. POLITO**  
LIEUTENANT GOVERNOR

**MIKE KENNEALY**  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

**EDWARD A. PALLESCHI**  
UNDERSECRETARY OF CONSUMER AFFAIRS  
AND BUSINESS REGULATION

**GARY D. ANDERSON**  
COMMISSIONER OF INSURANCE

July 26, 2019

Office of the Secretary of the Commonwealth  
Attn: Proposed Regulations – Fiduciary Conduct Standard  
Massachusetts Securities Division  
One Ashburton Place, Room 1701  
Boston, MA 02108

Re: Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and  
Investment Adviser Representatives

Dear Secretary Galvin:

The Massachusetts Division of Insurance (“Division”) submits these comments in response to your Preliminary Solicitation of Public Comments on a Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives (“Proposed Standard”). While the Division supports efforts to ensure that Massachusetts consumers receive sound investment advice, we note that annuity products offered by insurance companies are subject to regulation both by your office and by the Division, and we are concerned that the Proposed Standard may not be consistent with ongoing efforts to update national standards for recommending annuity products to consumers. For that reason, we respectfully request that the promulgation of the Proposed Standard be delayed to allow sufficient time to harmonize its requirements with our work, and that the Proposed Standard be modified as necessary to reflect the unique nature of annuity products.

**Background on the Uniform Regulation of Annuity Transactions**

The Division is a member of the National Association of Insurance Commissioners (“NAIC”), which 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 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.

Since 2003, state insurance regulators have overseen the sale of annuities to ensure products sold to consumers are suitable for them, based on a review of their needs. To that end, state insurance regulators have implemented regulations to ensure the suitability of annuity sales for policyholders. The *Suitability in Annuity Transactions Model Regulation* (“Model #275”) serves as a basis for this regulatory framework. Model #275 sets forth standards and procedures for recommending annuity products to consumers to ensure their insurance and financial objectives are appropriately addressed. Since the original adoption of the model, the standards have been updated for consistency with those issued by the Financial Industry Regulatory Authority. Most states, including Massachusetts, have adopted the updated version of Model #275. See 211 CMR 96.00.

#### **Ongoing Efforts to Update Model #275**

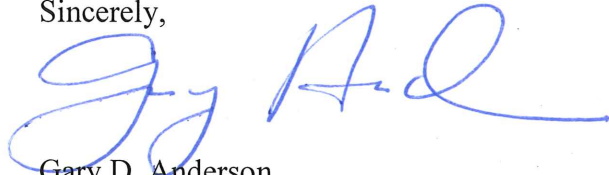
In late 2017, the NAIC’s Life Insurance and Annuities (A) Committee formed an Annuity Suitability Working Group to review and, as necessary, revise Model #275, to promote greater uniformity across NAIC-member jurisdictions. The Working Group has been focused on clear, enhanced standards for annuity sales so consumers understand the products they purchase, are made aware of any material conflicts of interest, and are assured those selling the products do not place their financial interests above consumers’ interests. The Working Group’s draft amendments to Model #275 clarify that all recommendations by producers and insurers must be in the interests of the consumer. The draft includes a requirement that producers and insurers, where no producer is involved, act with “reasonable diligence, care, skill and prudence” and “act in the interests of the consumer at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interests.” It would further require producers to clearly explain to the consumer the basis for a recommendation and to document such justification in writing. Additionally, the draft requires producers to disclose and answer questions about their role in the transaction, their compensation, and any material conflicts of interest.

The Working Group expects to finish its work on Model #275 later this year, at which time the Division and other state insurance regulators will be able to update their regulations to be consistent with the NAIC standard. Until that occurs, insurance companies and producers should not be subjected to any new rules or standards that impact annuity transactions. We believe that the strong, uniform standards being developed by the NAIC will be beneficial to consumers and the industry. Therefore, the Division respectfully requests that you defer further

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regulatory action on the Proposed Standard, as it applies to those products and entities that are regulated by the Division, while the NAIC completes its work on Model #275.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. D. Anderson", with a long horizontal flourish extending to the right.

Gary D. Anderson  
Commissioner of Insurance