



AMERICAN ACADEMY of ACTUARIES

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November 28, 2017

Eric A. Cioppa,
Chair, Financial Condition (E) Committee
National Association of Insurance Commissioners (NAIC)
1100 Walnut St. Kansas City, MO 64016

Dear Superintendent Cioppa:

The American Academy of Actuaries¹ Life Practice Council appreciates and values the opportunities it has had to support the work of the NAIC over many years. Recently, we have had some serious concerns about how a particular project is being conducted, and whether it comports with the NAIC's emphasis on and support for transparency and objectivity. Our concern is related to procedures with respect to work underway by the Variable Annuities Issues (E) Working Group. In 2015, the NAIC hired a consultant (Oliver Wyman) to undertake an effort to assist the working group in developing changes to the statutory framework for variable annuities (VAs), including both C-3 Phase II for risk-based capital (RBC) and Actuarial Guideline (AG) 43 reserve requirements. This is extremely important work that will affect in-force as well as prospective business.

As you may know, the Academy's Life Practice Council was instrumental in assisting the NAIC in first developing C-3 Phase II capital requirements and statutory reserve requirements specified in Actuarial Guideline AG 43. That process was conducted under and pursuant to the normal open meeting policy of the NAIC.

The consultant has, since early last year, been conducting unpublicized, closed meetings with the working group members and select industry/company representatives paying to participate in a Quantitative Impact Study ("QIS"). Consistent with the NAIC's Open Meetings Policy, the Academy's work on behalf of the NAIC has long been conducted in much more transparent manner. We understood that VAIWG members desired the participation of representatives of the American Academy of Actuaries with expertise in Actuarial Guideline 43/C-3 Phase II Work Group with this consultant. Despite our

¹ The American Academy of Actuaries is a 19,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

frequent requests to hold open discussions, the meetings continue to take place in a closed setting.

At the insistence of the industry participants in the Quantitative Impact Study, the Academy staff and work group members have been told the only way to grant access to these closed discussions is by signing individual non-disclosure agreements (NDA) with the consultant itself, and not the NAIC. The industry participants state that they are asking for the NDAs to protect the confidentiality of company data. While we appreciate the need for confidentiality when discussing the potential impact on individual companies, this confidentiality umbrella has been placed over all aspects of the VAIWG discussions, limiting the contributions of all Interested Parties toward the development of a new statutory framework for Variable Annuities.

It is our understanding that out of this closed process, the working group will present a proposal at the 2017 Fall National Meeting. It is unclear if there will be ample time or the transparency to understand the decisions made as to what is contained in that proposal in order for interested parties not privy to this closed process to have the ability to engage in the remainder of the working group's development process. Our greatest concern is that the proposal that will be made public for the first time in November and will not reflect independent and objective input from the Academy and other interested parties who were not part of the VA QIS.

Consequently, we cannot overemphasize the importance of robust, public discussions to gather different perspectives and understand the advantages and disadvantages of different approaches while regulations are being developed and finalized.

This matter is concerning both for the potential of not achieving the best public policy outcome regarding variable annuity regulations based on objective input from all interested stakeholders, but also in the development in this particular work stream because of its potential precedence for future NAIC work and the harm that would inflict on the NAIC's governance. We believe it is in the best interest of the NAIC and its model law/regulation development procedures that more specific policies be developed on how NAIC committees and working groups may use consultants in their work. Consultants hired by the NAIC deemed useful to its work should operate on a confidential basis only on a limited basis, not to include development of proposals which should be done publicly. If the consultant were hired to assist in development of a proposal, the consultant should operate as a resource in the open/public process.

Generally speaking, the goal of consultants is to satisfy clients. When a consultant is hired to assist with the development of regulations, it is important that a public process be followed so that objective input is received from all interested parties, and not overly influenced by a paying client. The policy should ensure that interested parties are not excluded from the development process.

I hope you will regard these comments in the respectful way in which they are intended. Our aim is to continue the successful working relationship the Academy has enjoyed with the NAIC over many years. If you wish to discuss any of these matters with me or our work group leadership, feel free to contact Craig Hanna, the Academy's Director of Public Policy at hanna@actuary.org.

Sincerely,

Dave Neve
Vice-President, Life
American Academy of Actuaries

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