

February 7, 2014

Re: Comments re. S7-08-13; Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comments

Great-West Financial¹ ("GWF") appreciates the opportunity to respond to the request for comments by the Securities and Exchange Commission ("SEC") on the Proposed Interagency Policy Statement ("Proposed Policy Statement") concerning standards for assessing diversity policies and practices.² GWF strongly supports a diverse workforce as we believe that greater diversity and inclusion can promote stronger, more effective and more innovative points of view within our organization.

GWF subsidiary companies include a limited broker/dealer, GWFS Equities, Inc. as well as two registered investment advisers, Advised Assets Group, LLC and Great-West Capital Management, LLC. Accordingly, the Proposed Policy Statement sets forth standards that would apply to these regulated entities, but not for all of the GWF companies. In this regard, compliance with the standards set forth in the Proposed Policy Statement for organizations such as ours is complicated and costly to implement.

As a preliminary matter, GWF wishes to express its appreciation for the Proposed Policy Statement being issued on a joint basis among the various agencies to which Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") applies and thereby eliminating any confusion that could develop due non-uniform policies adopted by each agency.

The Proposed Policy Statement addresses four main areas: (1) organizational commitment to diversity and inclusion; (2) workforce profile and employment practices; (3) procurement and business practices and supplier diversity; and (4) practices to promote transparency of

¹ Great-West Financial[®] refers to products and services provided by Great-West Life & Annuity Insurance Company (GWL&A) and its subsidiaries. Great-West Financial is headquartered in metropolitan Denver, Colorado. Great-West Financial administers \$201.5 billion in assets for its 5.2 million retirement, insurance and annuity customers. It is the nation's second largest underwriter of life insurance sold through banks (*BISRA Life Report*, Second Quarter 2013, based on total premiums at June 30, 2013) and fourth-largest retirement plan record keeper (*PLANSponsor*, June 2013, based on total participant accounts at Dec. 31, 2012). It is an indirect, wholly owned subsidiary of Great-West Lifeco Inc. and "A Member of the Power Financial Corporation Group of Companies"[®]. Great-West Financial[®] is a registered mark of Great-West Life & Annuity Insurance Company. "A Member of the Power Financial Corporation Group of Companies" is the registered mark of Power Corporation of Canada."

² *Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies*, SEC Release No. 34-70731; File No. 87-08-13.

organizational diversity and inclusion. GWF fully appreciates and understands the important goal of Section 342 of the Dodd-Frank Act but has some specific concerns on how the section is being implemented through the Proposed Policy Statement. GWF's comments on the Proposed Policy Statement are set forth below.

Use of Examination or Supervision Process

We note that the release states that the agencies "will not use the examination or supervision process in connection with these proposed standards." However, we also note that SEC Commissioner Aguilar has asked for comment on whether an agency should "utilize site visits or otherwise exercise its examination and supervisory powers in connection with the standards and assessments set forth in the Proposed Policy Statement." GWF strongly believes that it is inappropriate to use the SEC's staff to examine registrants' progress in embracing diversity or to bring legal action based on that progress. We note that SEC Chair Mary Jo White recently expressed similar concerns regarding use of federal securities laws to advance social policy.³ While these concerns appear to be addressed in the Proposed Policy Statement by the voluntary aspect for the self assessment and reporting of the results to the appropriate agency and voluntary disclosure to the public, we also note that the Proposed Policy Statement specifically contemplates that the standards "may need to change ... over time."⁴ GWF strongly urges the SEC, and all the agencies, to expressly incorporate into the standards that the agencies will not check a registrant's diversity policy, self assessments or reporting during the examination or supervision processes.

Mandated Diversity

Section 342(b)(4) of the Dodd-Frank Act prohibits any standards created from being "construed to mandate any requirement on or otherwise affect the . . . practices of any regulated entity, or to require any specific action based on the findings of (a self) assessment." Further, Commissioner Aguilar in his remarks accompanying the release specifically and correctly noted the voluntary nature of the standards:

The Proposed Policy Statement provides an approach that relies on *voluntary* self-assessments by regulated entities, *voluntary* disclosure of these self-assessments to the SEC and other regulators, and *voluntary* display of diversity information on public websites. Under this completely volitional approach, companies would not be required to take any specific proactive steps to enhance diversity in their workforce. [Emphasis in the original.]⁵

³ *The Importance of Independence*, Chair Mary Jo White, Securities and Exchange Commission, 14th Annual A.A. Sommer, Jr. Corporate Securities and Financial Law Lecture, Fordham Law School (Oct. 3, 2013), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370539864016#.UqXmCf0-Ck>.

⁴ Proposed Interagency Policy Statement, page 10.

⁵ Commissioner Luis A. Aguilar, "Statement on the Proposed Interagency Policy Statement to Establish Standards to Assess the Diversity Policies and practices of Regulated Entities," U.S. Securities and Exchange Commission, Washington, D.C., October 23, 2013.

In light of the phrasing of certain of the standards read in the imperative, for example:

- The entity **conducts** equal employment opportunity and diversity and inclusion education and training on a regular and periodic basis
- The entity **utilizes** metrics to evaluate and assets workforce diversity and inclusion efforts, such as recruitment . . .
- The entity **holds** management accountable for diversity and inclusion efforts;

GWF strongly believes the standards should explicitly and clearly incorporate and underscore Commissioner Aguilar’s statement as the recognized interpretation by all the agencies.

Supplier Diversity

GWF firmly believes, and it is our policy, that no potential contractor or supplier for goods or services for Great-West should be precluded from consideration on the basis of race, religion, color, sex, national origin, age or disability. Furthermore, every GWF employee with procurement responsibility to either directly or indirectly commit the expenditure of funds or who is involved in procurement decisions for the purchase of goods and services should give consideration to consider supplier diversity and retain the services of a women-owned, minority-owned, disabled veteran-owned, and other such similar businesses in a manner that is consistent with state and federal laws and regulations. In addition, each of our contractors and suppliers are encouraged to provide for the participation of qualified women-owned, minority-owned and disabled veteran-owned businesses.

Notwithstanding the foregoing, in light of the financial products and services provided by GWF our clients and customers depend on GWF to not accept or enter into a bad business deal or utilize a lower quality contractor, supplier, product or service. Quality, price and contractual terms cannot be sacrificed in any meaningful way in order to achieve the goal of supplier diversity, regardless of how commendable the goal is.

GWF believes that most reputable financial institutions likewise maintain supplier diversity policies. Our concern regarding the supplier diversity standard in the Proposed Policy Statement is centered on the requirement to implement specific metrics and analytics related to (1) annual contract spending; and, (2) percentage of supplier spend on minority-owned and women-owned business. We are troubled with focusing exclusively on minority-owned and women-owned businesses without regard to other diverse suppliers, such as disabled veteran-owned businesses, and that analysis of minority-owned and women-owned businesses must be further broken down by race, ethnicity and gender. While the level of analysis and work required to complete such analysis for these two metrics is costly and time-consuming wholly unrelated to the financial products and services provided to our customers, the additional undertaking to analyze a contractor’s sub-contractors as well as the demographics of the workforce of the contractors and sub-contracts is overwhelming, if not impossible to achieve. Accordingly, GWF strongly urges the agencies to, at most, only require that the regulated entities have a supplier diversity policy similar to that of GWF’s and not to include burdensome requirements to implement the specific metrics and analysis as currently articulated in the standards.

Transparency of Organizational Diversity and Inclusion

GWF believes the goal to “promote transparency and awareness of diversity policies and practices” should be properly balanced with the competing need of the regulated entities to protect sensitive information that may be voluntarily disclosed to the agencies. Without such protection, regulated entities may be reluctant to voluntarily put the standards into practice. Indeed, we note in particular that some of the information that a regulated entity may provide would be protected under the Freedom of Information Act (“FOIA”) as a result of FOIA exemptions;⁶ therefore, clarifying that the information is protected *in toto* eliminates confusion and potential legal action to sort out what in the report is or is not disclosable to the public. Accordingly, GWF urges the agencies to explicitly include privacy protections in the final standards, especially since the agencies are not invoking supervisory or examination authorities. We also urge the agencies to include an anti-waiver provision into the final standards so that privileged materials generated during a self-assessment remain privileged and cannot be distributed or shared beyond the agency receiving the information provided by the regulated entity.

* * * * *

Thank you for your time and consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Beverly A. Byrne". The signature is written in a cursive, flowing style.

Beverly Byrne
Chief Compliance Officer and
Chief Legal Counsel, Financial Services

⁶ See in particular FOIA exemption 4 (trade secrets and commercial financial information obtained from a person [that is] privileged and confidential); and FOIA exemption 6 (“personnel . . . files” when the disclosure of such information “would constitute a clearly unwarranted invasion of . . . privacy.”)