

An American Perspective on the New EU Rules on Customer/Policyholder Protection Viewed Against the NAIC Model Acts

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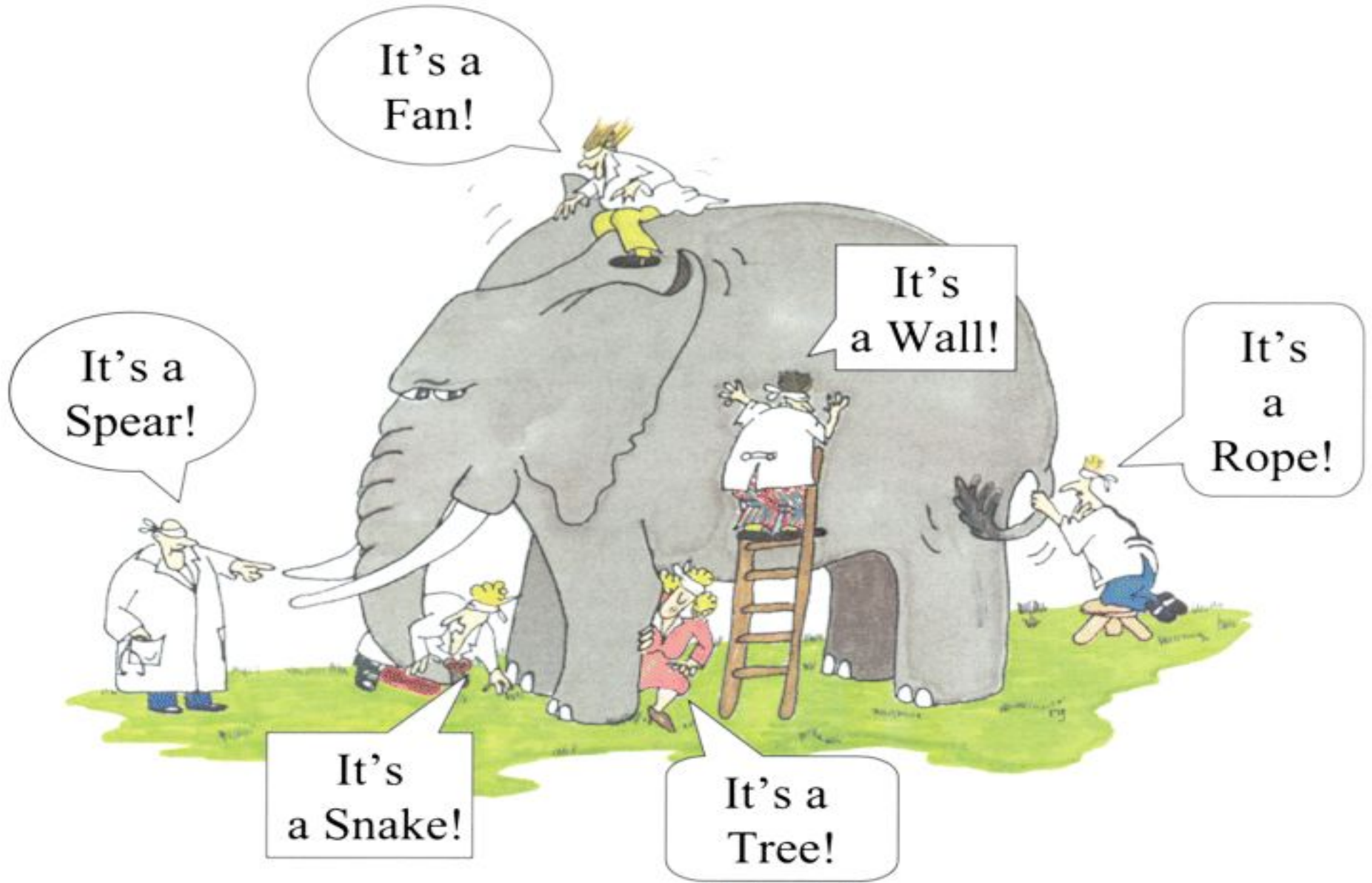
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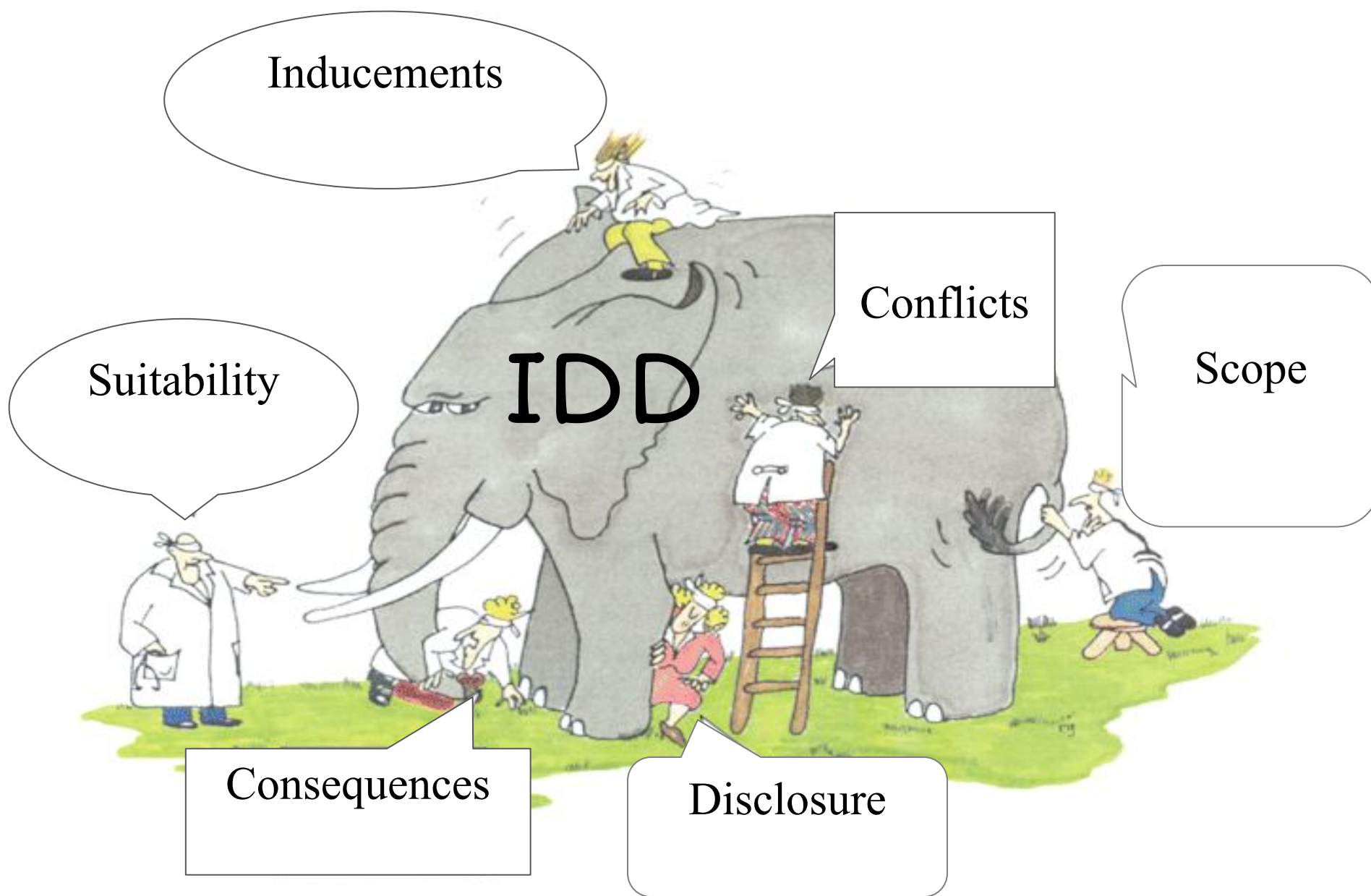
University of California, Hastings College of the Law

VIIth Association Internationale de Droit des Assurances (AIDA)
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Background

McCarran–Ferguson Act:

§ 1012(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance

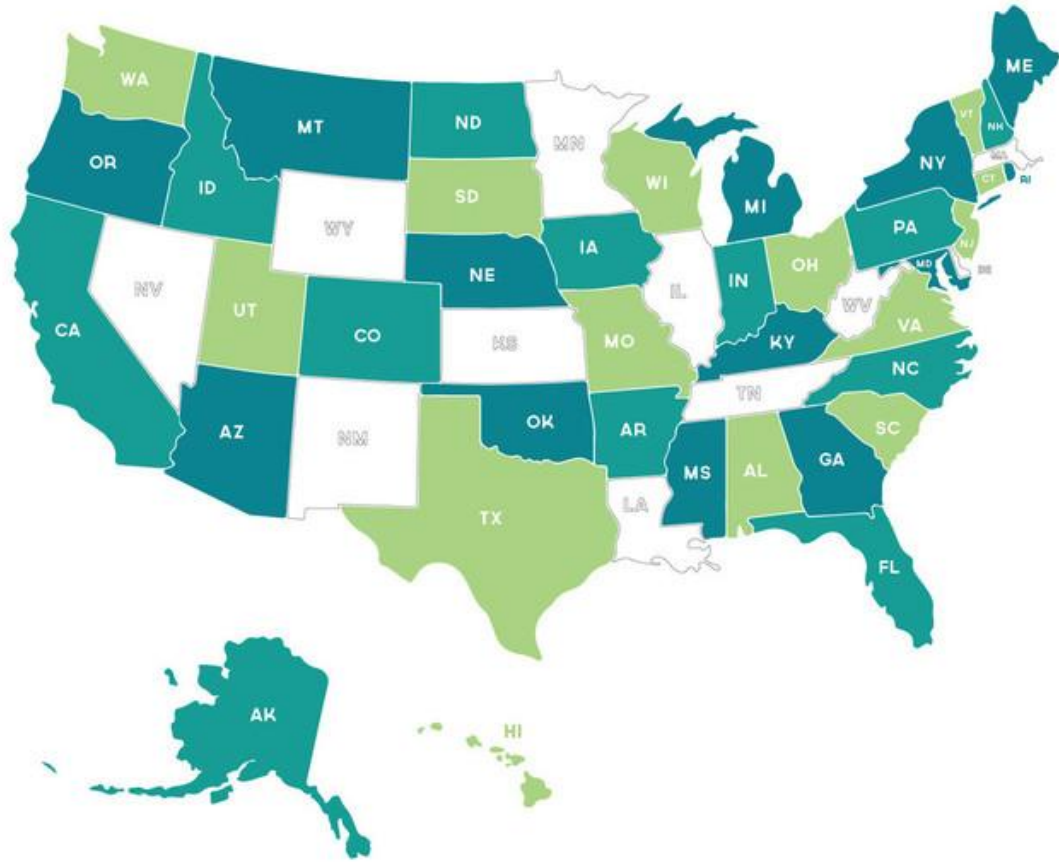


The Result

1. Congress does not usually specify that legislation relates to the business of insurance
2. Each state is free to formulate its own rules



The United States is a loose confederation of states with divergent insurance law and regulation

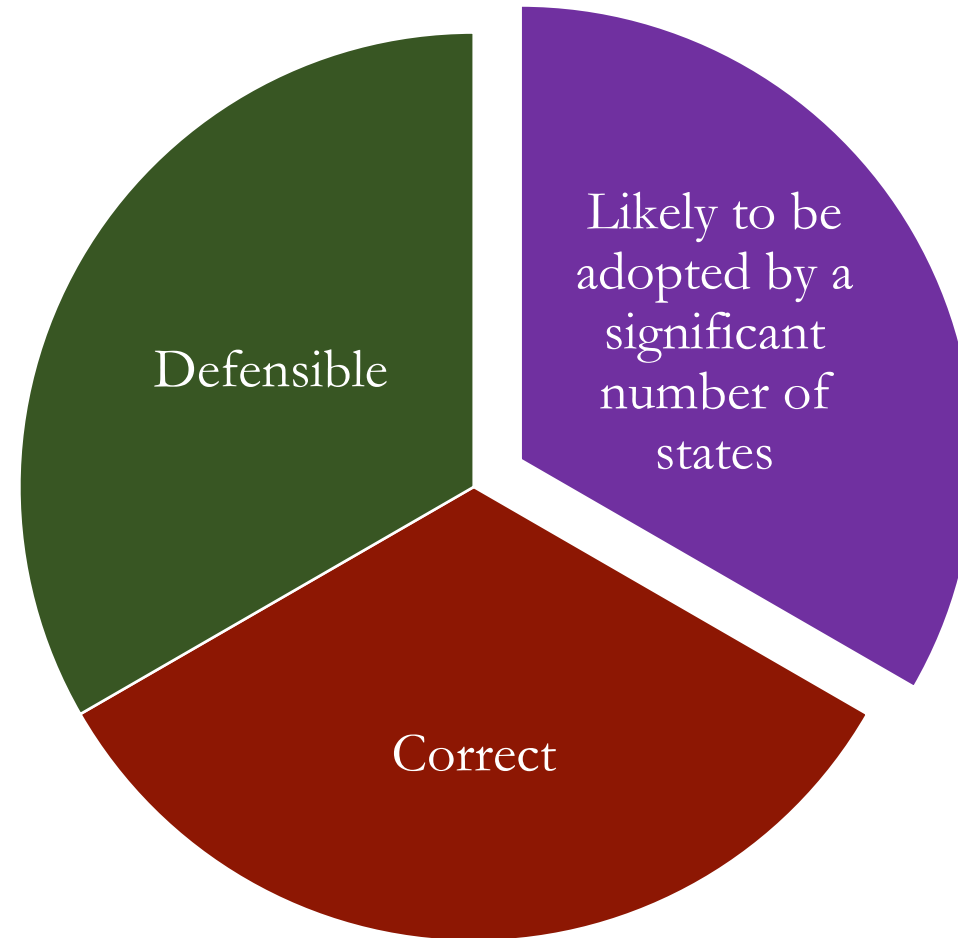


Push to Uniformity

- ❖ American Law Institute: Restatement of the Law of Liability Insurance
- ❖ National Association of Insurance Commissioners: Model Laws



The ALI/NAIC strive to select solutions that are:



NAIC Model Laws

The NAIC model law . . . helps provide uniformity while **balancing** the needs of insurers operating in multiple jurisdictions with the unique nature of state judicial, legislative and regulatory frameworks. . . . While the value of a state-based regulatory system . . . is the ability to tailor state laws and regulations to meet the **needs of resident consumers**, there is recognition that there are some areas where **uniformity and consistency** across state borders is beneficial to all.

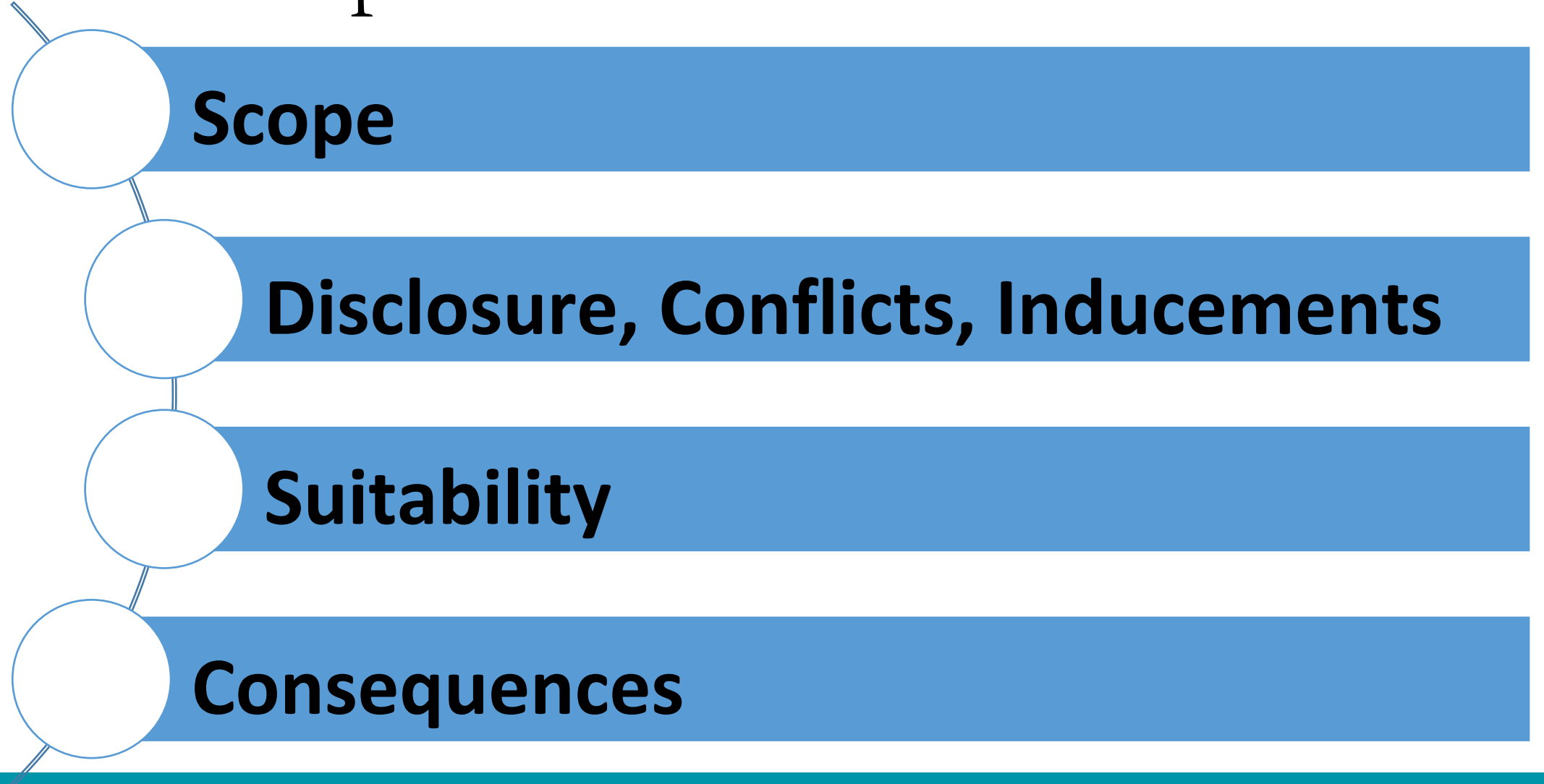


IDD statement of purpose:

IDD aims at **enhancing protection** of consumers and retail investors buying insurance products or insurance-based investment products by ensuring a greater **transparency** of insurance distributors with regard to the price and costs of their products, better and more comprehensible product **information** and improved **conduct** of business rules, in particular with regard to advice.



Points of Comparison



Scope

IDD

- Comprehensive
- Directed at consumer protection

NAIC

- Piecemeal – consumer protection
- Uneven adoption by the states



Disclosure, Conflicts, Inducements

IDD

- Broad disclosure of fees and conflicts
- Directed at consumer protection

NAIC

- Disclosure to Insurance Commissioner
- Disclosure of commission structure
- Context matters



Suitability

IDD

- Article 30
- Suitability statements required

NAIC

- Piecemeal approach
- More burden on the consumer
- Except for military, sparse adoption



Consequences

IDD

- Restrained
- Open treatment of criminal sanctions
- Pragmatic

NAIC

- Uneven
- Strict and prescriptive in places



There remains work to be done



Thank you – Questions?

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