February 26, 2018

The Honorable Maria T. Vullo  
Superintendent  
NYS Department of Financial Services  
One State Street  
New York, NY 10004

Re: The Proposed First Amendment to New York Regulation 187 (11 NYCRR 224) – Suitability in Life Insurance and Annuity Transactions

Dear Superintendent Vullo:

This joint letter is submitted on behalf of many of the stakeholders who are either issuing, selling or distributing life insurance products in New York State. We write to you to express our substantial concerns with the Proposed First Amendment to Regulation 187 (11 NYCRR 224) – Suitability in Life Insurance and Annuity Transactions, which was exposed by the Department of Financial Services for public comment on December 27, 2017.

The community representing those who manufacture and distribute life insurance products largely supports a best interest standard for sales of annuity contracts, both nationally and in New York. Therefore, we endorse the goals of Regulation 187 to implement a workable and reasonable best interest standard for annuity contracts sold in the New York market. However, consistency with the various federal and national organizations that are currently working on this topic (the federal Department of Labor and Securities & Exchange Commission, the Financial Industry Regulatory Authority, and the National Association of Insurance Commissioners) regarding how that standard should be defined and applied is of utmost importance. If the adopted New York rule causes an unfair disadvantage, compared to what is being applied to others marketing non-insurance products or in what is developed for use in other states, there could very likely be negative implications for the New York market and the interests of New York consumers.

Since other regulators and the NAIC are actively working on a best interest standard and have expressed the intent to harmonize their efforts, we would strongly urge the Department of Financial Services to slow down the process for finalizing adoption of this Proposal. We believe that the Department should work with interested stakeholders, as well as other regulators, on achieving a consensus on the best uniform approach, so that New York does not once again become an island unto themselves. It is much more important to have this accomplished correctly and uniformly, than it is have it accomplished most quickly.

Unlike the approach taken or being proposed by other regulators on this topic, this Proposal extends scope both to include life insurance, as well as transactions beyond the point of sale, including in-force ones, such as simple customer servicing functions (i.e., the exercising of contractual rights under the existing policy or contract). Serious consideration needs to be given to the implications of these proposed expansions.

Regarding the extension to include life insurance in this Proposal, we are concerned that statistics have shown historical declines in both the ownership and amount of life insurance held by consumers and that this Proposal could place additional, perhaps unnecessary, hurdles in front of the sale that could accelerate that trend in the New York market. This is especially concerning given that it appears at this juncture that the NAIC is unlikely to expand their current exposure draft on this same subject to likewise include life insurance. We are very concerned that an outcome where New York is the sole regulator implementing a life insurance best interest/suitability standard could ultimately affect the affordability and
accessibility of the products that are sold in the New York market. This would ultimately be to the detriment of the New York consumer, who could find that they have fewer choices at affordable rates when considering the purchase of life insurance products in this state.

Additionally, we are critically concerned with the requirement of this Proposal to extend the best interest/suitability regime beyond the point of sale. Again, this is an approach that is unlikely to be implemented beyond New York. We believe that this requirement will be extremely costly with which to comply and, even more so, we are apprehensive that the customers that we serve could very likely react disapprovingly to our required attempts to perform a suitability review, when they are simply contacting us in an effort to exercise a contractual right. This requirement is even more concerning because we fail to understand why it is necessary. There is no inherent incentive for the provision of conflicted advice when companies or producers are providing ongoing policy servicing to their existing customers.

If this Proposal were to be adopted as currently drafted, we are gravely concerned that it will have a detrimental impact on New York consumers and could negatively affect their access to affordable products and information about annuities and life insurance. Therefore, we urge you to work with all interested parties on making the revisions necessary so that when this Regulation is adopted, it will be clearly beneficial to the consumers of our products in New York.

Sincerely,

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