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

February 26, 2018  

Re: New York Proposed 1st Amendment to Regulation 187 (11 NYCRR 224) – Suitability in Life  
Insurance and Annuity Transactions  

Dear Superintendent Vullo:  

The Life Insurance Council of New York (LICONY) respectfully submits the following comments in  
regard to the Proposed First Amendment to Regulation 187 (11 NYCRR 224) – Suitability in Life  
Insurance and Annuity Transactions.  

The member companies of LICONY share your belief that the financial interest of the customer  
should always be at the heart of any life insurance or annuity transaction. We also believe it is possible  
to both protect consumers and allow life insurance and annuity products, and the New York companies  
that sell them, to remain competitive. We want to call special attention to those aspects of the Proposal  
that we believe would adversely affect existing customers and cause unintended consequences that  
may impact customer satisfaction and expectations regarding how they can utilize the products they  
already own. We strongly urge that the final amendments to Regulation 187 be carefully considered  
to ensure that any new requirements protect the interest of consumers while preserving their access  
to affordable life and annuity products. As the public safety net becomes increasingly uncertain, these  
products and the private companies that offer them have become even more critical to the long-term  
financial security of consumers. We look forward to productive discussions with you and a positive  
resolution to the comments and concerns that follow.  

1) **Regarding the imposition of a best interest standard of care at the point of sale for all  
annuity contracts**, LICONY supports this expansion in the Proposed Regulation 187, as part of a  
broader best interest standard imposed on the sale of annuities, as well as securities and other  
financial products; that said, it is crucial that such a standard is not implemented in a manner that is  
detrimental to New York consumers.  

First, placing inconsistent burdens only on the sales of these types of products and only in this state  
could ultimately be to the detriment of the consumer in New York. Steps taken by companies to comply  
with the provisions of the federal Department of Labor rule that have already taken effect have resulted  
in some disruption in the marketplace in the form of reduced product offerings and limitations on  
financial advice.¹  

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¹ See, e.g., U.S. Chamber of Commerce, The Data Is In: The Fiduciary Rule Will Harm Small Retirement Savers  
(Spring 2017), available at  

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- One report found that 71% of advisers surveyed planned to stop providing advice to at least some of their small accounts due to the risk and costs of the DOL Rule.²
- At one company alone, over 10,000 accounts have been deemed too small for the risk associated with providing advisory services to them under the DOL Rule.³
- Reduction in the availability of annuities may significantly negatively impact consumers; a new analysis by LIMRA suggests that annuity owners are better prepared for retirement than those not owning an annuity.⁴

Accordingly, uniformity with other federal regulators (SEC, DOL), self-regulatory organizations (FINRA), national associations (NAIC) and state laws & regulations regarding how that standard should be defined is paramount. An unlevel regulatory playing field applied to products issued by New York life insurance companies, compared to standards applied to broker/dealers & others marketing non-insurance products for retirement planning or developed for use in other states by the NAIC, could result in negative consequences for the life insurance market in New York.

Those consequences would be felt not just by life insurers doing business in this state, which may find that certain distribution channels are no longer offering their products in New York, but by New York consumers who need these products. Companies could also react to the implementation of an outlier state regulatory framework by electing to exit certain business lines or reprice their products for new business to reflect the higher cost of doing business in this state. Early reports on the impact of the federal DOL rule provide a good example, i.e. a former CBO director estimates that the Rule has the potential to increase consumer costs by approximately $46.6 billion – roughly equivalent to $816 per account – plus $1500 in duplicative fees for those who already paid a commission and now must move their assets into fee-based accounts⁵. LICONY believes that additional regulatory obligations placed on New York life insurers are already causing companies to reduce or reprice their offerings in this state and that the potential for that outcome should be taken into consideration by the Department whenever new obligations are being considered.

It is only life insurance that can protect against the unexpected loss of a wage earner or business owner and, with defined benefit pension plans becoming increasingly rare, it is only annuities that can provide a guaranteed stream of income for life to retirees. LICONY believes that it is flawed public policy to put collars on the purchase of life insurance and annuity products that are not placed on competing financial service products, such as a mutual fund or a 401K retirement plan, which do not offer the public protection element of life insurance and annuity products. Placing hurdles on the sale of life products that are not uniformly placed upon competing financial services products could only result in less sales of public protection life insurance and annuity products to consumers in this state.


² See The Data Is In, supra.
³ See, e.g., Testimony of Jerry Lombard at the Hearing of Impact of the DOL Fiduciary Rule on the Capital Market (July 13, 2017), available at: http://www.sifma.org/issues/Item.aspx?id=8589967967 (stating that “Upwards of 10,000 of our customer retirement accounts will be relegated to a ‘no advice service’ desk - as they are too small for the risks imposed by the DOL or too costly to place in an advisory account that would remove the supposed conflicts the DOL is trying to regulate”).
⁴ See Allison Bell, Annuity Owners Are Different: LIMRA, ThinkAdvisor, Feb. 20, 2018, at http://www.thinkadvisor.com/2018/02/20/annuity-owners-are-different-limra?slr企业家=1519311892 (reporting that annuity owners surveyed were more likely to have a financial advisor, more likely to have a formal retirement plan, and had more confidence regarding their ability to maintain their standard of living, as compared to those who did not own an annuity).
This effect could also be particularly acute for the low to middle-income markets that are already arguably underinsured. For instance, in response to the federal DOL Rule, orphaned accounts at one company in 2017 had an average reported account value of $21,000.⁵

Results from the U.K., which implemented a rule similar to the federal DOL Rule, demonstrate that it is critical to make sure that you strike the right regulatory balance between appropriate, necessary consumer protection and making sure that public protection life insurance and annuity products are available and affordable to consumers. Failure to do so could result in a loss of advice for those very consumers this Proposal is seeking to protect.

- The U.K. parallel to the DOL Fiduciary Rule, a set of recommendations from the Retail Distribution Review ("RDR"), was adopted in 2013 by the U.K. Financial Services Authority ("FSA").
- One study found that, in the year before the rule was to take effect, the number of FSA-registered advisers dropped from 40,000 to 31,000.⁷
- A study conducted by Association of Professional Financial Advisers found that consumers are increasingly divided into two groups: those consumers who are wealthy enough to be profitable for advisers and so have access to more professionalism and transparent service from advisers today, and those who are unable or unwilling to pay advisory fees and so are increasingly forced to turn to public sources for information and may be worse off than their wealthier counterparts.⁸
- Another source reported in 2014 that 11 million consumers in the U.K. considered financial advice too expensive and therefore had fallen into the “advice gap” caused by the RDR.⁹
- A study performed for the Financial Conduct Authority (“FCA”) (the successor to the FSA) found that for those currently without advisers, 52% of respondents say they would seek advice when starting pension or planning retirement, yet only small numbers of consumers would seek advice for modest sums: 4% for an amount of approximately $6,000, and 31% for approximately $25,000.¹⁰
- These figures demonstrate that there are U.K. consumers who want retirement planning advice but are unwilling or unable to afford it and that, as a whole, the RDR may be having unintended and detrimental consequences.

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⁶ See The Data is In, supra (reporting that the number of orphaned accounts at one large mutual fund provider nearly doubled in the first three months of 2017, and that the average balance was $21,000; the company estimated that 16% of its accounts would be orphaned this year, due to the DOL Rule).
⁸ See Ass’n of Professional Financial Advisers, The Advice Market Post RDR Review 10-11, 12 (June 2014), available at http://www.apfa.net/documents/publications/APFA-report-the-advice-market-post-RDR-June-2014.pdf (noting that consumers are increasingly being divided into two groups; observing that evidence suggests that advisers are more likely to decline to take on clients if they do not think the relationship will be profitable, and that not all consumers who want in-person advice are able to access it — affecting consumers with smaller amounts to invest the most).
⁹ Emma Wall, 10 Million Find Advice Too Expensive, Morningstar, Aug. 28, 2014, at http://www.morningstar.co.uk/uk/news/128424/10-million-find-advice-too-expensive.aspx. see also Emma Hughes, FCA Admits RDR Contributed to Advice Gap, FT Advisor, Jul.19, 2016, at https://www.ftadviser.com/2016/07/19/regulation/rdr/fca-admits-rdr-contributed-to-advice-gap-chujiPxa8fM6KvIaAxxfN/article.html (noting comment by Chief Executive of FCA that the RDR, while achieving some objectives, also caused advisers to pull away or make their services too expensive for one-off or limited advice).
LICONY is concerned that a similar host of unintended consequences could result in New York without significant changes to the Proposal.

The other federal and state regulators active in this arena are currently still deliberating on a uniform standard for defining best interest. We believe that it is unlikely that the SEC will act before October of this year. Likewise, the NAIC is assessing the public comments received on the first exposure of their *Suitability and Best Interest Standard of Conduct in Annuity Transactions Model Regulation*, which draft does not incorporate a best interest standard for life insurance. LICONY urges you to pace the process for finalizing adoption of this Proposal accordingly, and to work with interested stakeholders, as well as other regulators, on achieving a consensus on the best uniform approach. For the benefit of consumers most of all, we strongly believe that it is far more important to get the right requirements in place, than to rush the process and end up with an unworkable Regulation that impacts the affordability and availability of our products in this state.

If the Department decides to move forward with adoption of the proposed amendments ahead of other regulators, we ask that the Regulation provide that transactions that are compliant with: 1) existing FINRA Rules, with respect to the suitability provisions of the Regulation, or 2) the impartial conduct provisions of the federal DOL rule, with respect to the best interest standard, should also be deemed substantially compliant with the New York Regulation. These provisions could be included in the Purpose section of the Regulation, similar to the approach taken regarding the topic of regulatory consistency in the existing Regulation. **We strongly believe that this provision is critical for the sake of uniformity and regulatory consistency.**

2) **Regarding the Proposed amendments to the Regulation to expand the application of a best interest standard of care to the sale of life insurance.** LICONY commits to working with the Department to develop a best interest standard that is appropriate for life insurance products. Although there are varying degrees of concern among our members regarding this proposed expansion, an agreement in concept to this requirement represents a sea-change in opinion by our membership and was not arrived at easily. What lies at the core of that evolution is the opportunity it provides to demonstrate our ongoing commitment to the ultimate financial well-being of our customers, as well as to establishing a standard that permits a recommendation to be based on the consumer's insurance needs and financial objectives. However, it is imperative that a best interest standard for life insurance not disadvantage New York consumers through a diminution of the marketplace for life insurance products.

To that end, LICONY believes that, when developing the new construct for a best interest standard for life insurance, the following must be taken into consideration:

- Annuities and life insurance are inherently different products serving different consumer needs, providing different benefits and presenting different potential risks to retail consumers. Further, life insurance is subject to insurable interest requirements, as well as, typically, financial underwriting standards. LICONY believes that it is crucial that the requirements reflect the differences between the two products, so that the Proposal achieves its objective.
- Due to their very nature, sales of life insurance are already difficult to accomplish, since, although it offers important protections, most people do not like acknowledging the prospect of their demise (i.e., life insurance is sold & not bought).
- Marketing life insurance to anyone, but especially to millennials, has become increasingly challenging in an online world that is becoming more and more prevalent. For that reason, it is important that the Proposal be crafted so that it does not create additional hurdles to retail consumer access to affordable life insurance and services in the manner that such consumer wants to obtain it.
- Recruitment of producers to sell life insurance has also become increasingly difficult and we are faced with a rapidly-aging producer base.
The totality of the voluminous other compensation, sales & disclosure requirements currently placed on life insurance sales in this state (i.e., Regulation 74, Regulation 30, Regulation 210, Regulation 194, §4228, to name a just a few), many of which are unique to N.Y., and which, combined with this Proposal, could result in distribution partners for insurers turning away from sales of life insurance in favor of other products. (see attached memo from Hinman Straub for a listing of some of these existing requirements).

For all of these reasons, we believe that a best interest standard for life insurance must be appropriately tailored to reflect the unique criteria that are relevant to making an appropriate recommendation with regard to the purchase or replacement of life insurance. This standard should also be implemented in a manner that does not place unnecessary hurdles to consumers getting the protection that they require. As previously noted, we believe that it will be necessary to develop criteria for most life insurance products that is separate and distinct from those that are applied for annuities.

For instance, life insurance is primarily designed as protection against mortality. The factors that determine the needs of a life insurance consumer primarily are dependent upon the level of assets that the applicant’s beneficiaries will need to continue their lifestyle in the event of the untimely death of the applicant. Annuities are, conversely, primarily designed as protection against longevity, through adequate savings and the availability of a lifetime income option. The factors that determine the propriety of an investment in an annuity are the individual’s assets and other investments, expected income while employed, expected time until retirement and other factors relative to the contract owner’s anticipated retirement income and, thus, accumulation needs. Life insurance provides protection against a certainty (death), whereas annuities protect against a contingency (retirement & potentially outliving savings). In general, the insured/owner of a life insurance policy does not stand to benefit from the policy (the beneficiary does), whereas the owner of an annuity typically does benefit directly.

Absent separate treatment, we are concerned that the Proposal runs the risk of causing both another hurdle to life insurance sales, as well as potentially a tipping point of over-regulation of the product, which could further suppress sales in the New York market. Fewer life insurance policies at lower benefit amounts in New York means more people who are unable to take care of their own finances in times of need, resulting in more strain on state resources.

3) Regarding the provisions of the Proposal that apply the best interest standard of the Regulation to all transactions, even post-sale, in-force transactions that are simply day-to-day customer service, many of which relate to the exercise of a contractual right by the policyholder, LICONY has grave concerns and urges you to reconsider this expansion.

We fail to understand why it is necessary to apply the suitability analysis/best interest standard regime to simple policy or contract servicing, especially since we are not aware of any problem related to these types of transactions that needs to be solved by the imposition of these requirements. It is highly unlikely that there would be the potential for conflicted advice for simple call-center (or even producer-level) servicing of in-force contracts.

LICONY and our members are very concerned that our customers would be poorly served by an insurer’s or producer’s effort to perform a suitability review when they are simply attempting to exercise a contractual privilege, such as a request for a policy loan or conversion, or obtain other time-sensitive services. In the fast-paced world in which we are all currently living, LICONY member companies are keenly aware that most of our customers wish to complete the transaction that they are seeking in an expeditious fashion. We are also aware that any attempt by us to complete a suitability review in order to comply with this Regulation will result in dissatisfied customers who are displeased with our franchise as a result of being required to go through a time-consuming and, in our view, unnecessary process.
The life insurance policies and annuity contracts that LICONY members sell are often key components of our customer's overall financial strategy over the course of ten to thirty years or longer. It is critical that they be able to turn to their agent for service issues over the years, as their needs develop. LICONY is concerned that this requirement could have a chilling effect on the current process for the servicing of in-force customers by insurers or producers who might pull back from providing such critical service, in order to avoid even the appearance of providing advice that would trigger the requirements of the Regulation and corresponding potential liability. Notably, we point to one of the reported outcomes of the implementation of the federal DOL Rule, which is that customer accounts with lower values are being shifted over to systematic "robo-advisors" or call centers staffed by personnel who cannot provide advice.

Even where producers and insurers are willing to take on this additional work and exposure, we believe that the result would be the imposition of additional, formalized processes and documentation requirements in order to complete a transaction that would be appropriate in the first instance. We respectfully submit that the establishment of this new process will provide no additional consumer protection and will only interfere with the customer's ability to receive expeditious and convenient services. We believe that this outcome would clearly not be in the best interest of the customer.

Lastly, LICONY is concerned that this proposed requirement could create a significant compliance conundrum for companies that must also follow federal SEC or FINRA rules for variable products that govern the timing of execution of transactions. The proposed provisions could very likely conflict with the federal rules, something that our member companies already routinely face in relation to certain replacement requirements under Regulation 60.

For these reasons, LICONY strongly believes that the best interest requirements of this Proposal should not be applied to any post-sale, customer-servicing transaction.

4) In addition to the foregoing, LICONY will be submitting specific revisions to certain key elements of the Proposal, in particular, but not limited to:

- the definition of recommendation to provide that it should be individually tailored to the retail consumer and construed as advice by the consumer, which advice results in the purchase or replacement of a policy for which the producer receives compensation. The definition should also be refined to provide for what a recommendation is not (§224.3(e));
- the definition of suitability information to establish what relevant information an insurer or producer should consider when making a recommendation as to whether or not a transaction is in the best interest of the retail consumer (§224.3(g));
- the definition of suitable to clarify that it should only take into account the types of policies that the producer is authorized to sell by the insurer (§224.3(h));
- the definition of transaction (§224.3(i)), to remove the application of the Proposal to post-sales, inforce-transactions;
- the best interest standard (§224.4(b)(1)) to refine the language "without regard to the financial or other interests of the producer, insurer or other party;"
- add new exemptions (§224.8) from the Regulation for certain products and or circumstances that do not further the objectives of the Part;
- the provisions of 224.5(b) – Insurer Responsibility – to clarify the intention of the requirements;
- the provisions of §224.4(m) that applies the requirements of the Part to every producer in the transaction;
- refine the breadth of §224.4(f)(1) re: required documentation of all relevant suitability considerations;
- refine language in §224.4(l) re: use of "financial advisor" term by producers.
5) **Regarding the effective date in the Proposal**, LICONY members companies have indicated a very strong belief that they will need at least a two-year extended effective date for the imposition of this new rule. This is especially the case with regard to its application to life insurance policies and in-force transactions, neither of which have previously been covered under the Regulation, thus requiring the development, testing and implementation of entirely new processes. Among other things, compliant, effective and efficient implementation of the amendments will require IT changes, the development of forms, disclosures and compliance policies and procedures, procedural testing and producer and other staff training. This will be a significant task and will realistically take significantly more than 90 days.

Lastly, we felt it important that we provide you with a clear indication of the grave concerns felt by our life insurance member companies regarding the potential implications of the requirements of the current Proposal. To that end, LICONY, along with the ACLI, polled our joint members over the past several weeks to ask them about anticipated impacts and costs associated with this Proposal, were it to be adopted as currently written. The survey was completed by companies that represent over 63% of the life insurance premiums and annuity considerations underwritten by New York-licensed companies. It found that, while the intention of the Proposal is to protect consumers, the life insurance company members of LICONY believe that it may cause an unintended opposite effect, if implemented as currently Proposed. For example, the survey found:

- 99% of respondents said that they believed it would be more difficult to sell life insurance in New York;
- 93% said that they believed it would be more difficult to sell annuities;
- 87% of companies surveyed said that they believed that the Proposal will negatively affect life insurance sales in New York; and
- 73% said they believed that it would negatively affect annuity sales.

In terms of existing customers and the application to in-force transactions, the respondents felt that the Proposal will result in less advice to customers, as 98% of companies said it will be harder to service accounts. Furthermore, 62% of respondents believe the Regulation will lead to less information being offered to consumers on products.

The survey also found the Proposal would significantly increase costs which could have a corresponding effect on pricing. On average, respondents estimated that ongoing, annual compliance costs were estimated at $66 million. We believe that our products provide unique financial protection to families and survey respondents believed that, absent changes, the affordability and accessibility of life insurance and annuity products could well be compromised by the implementation of this current Proposal.

We would be happy to meet with you to discuss our submission and we appreciate the consideration that you have already given to our viewpoints on this topic which is of vital importance to our members.

Sincerely,

Mary A. Griffin
President & CEO

cc: Scott Fischer, Executive Deputy Superintendent for Insurance
Nathaniel Dorfman, General Counsel, Deputy Superintendent for Legislative & Regulatory Affairs
James Regalbuto, Deputy Superintendent for Life Insurance
Lisa Fernez, Chief of the Life Bureau

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MEMORANDUM

TO: Diane Stuto
Managing Director, Legislative & Regulatory Affairs
Life Insurance Council of New York, Inc.

FROM: Hinman Straub P.C.

RE: Proposed Amendments to Regulation 187

DATE: February 26, 2018

Pursuant to your request, we have prepared the following synopsis of the laws and regulations that govern life insurance and annuity transactions, including disclosure requirements applicable to sales and other policy-related transactions.

Product Approval

- Section 3201 – Prior Approval
  
  Policy forms must conform to the requirements of the Insurance Law, not be inconsistent with law and not contain provisions that are misleading, unfair or inequitable. The form and content of policies are subject to substantive review and approval and must comply with statutory and regulatory standards before they can be sold to consumers. The standard provisions applicable to each product type require specific disclosures, including the following examples.

  - Free Look Provision
    
    The free look provision in Sections 3203(a)(11) and 3219(a)(9) for individual life insurance and annuity contracts (and applicable group certificates) provide a cooling off period during which consumers can exercise judgment free of sales pressure.

  - Non-Guaranteed Element Disclosure
    
    Section 3203 requires specific disclosures for life insurance policies that credit additional amounts (non-guaranteed elements).

  - Disclosure of Variable Elements
    
    Section 4240 contains specific disclosure requirements for variable annuity and variable life insurance products.

  - Market Value Adjustment Disclosure
    
    Sections 4221 and 4223 require specific disclosures for policies and contracts with market value adjustment provisions.
• Transaction Related Disclosure

Section 3230(c) prohibits insurers from paying accelerated death benefits or special surrender values to the policy owner or certificate holder for a period of five days from the date on which the information specified in subdivision (d) of this section is transmitted in writing to the policy owner or certificate holder. The policy owner or certificate holder shall have the right to rescind the request for such payments at any time during the process of application for said benefits.

Section 3230(d) requires insurers to disclose the following within five days of receiving an application to accelerate benefits:

(1) an illustration demonstrating the effect of the accelerated benefit on the policy’s cash value and policy loans;
(2) a numerical computation of the amount of the death benefit which would be payable upon death;
(3) a numerical computation of the amount of the death benefit that would be payable upon acceleration; and
(4) a notice that other means may be available to achieve the intended goal, including a policy loan.

Insurance Producers & Insurers

o Competent and Trustworthy Standard:

Sections 2103 and 2104 prescribe the licensing requirements for insurance agents and brokers, respectively, that ensure a minimum level of competence and trustworthiness.

• Extensive course work and written examination requirements. The course work provides a comprehensive overview of the types of policies, riders, required provisions, permissible exclusions, tax related issues, underwriting and marketing practices (including replacement), disclosure requirements and consumer needs analysis.

• Section 2132 of the Insurance Law establishes the continuing education requirement.

• Section 2110 permits the superintendent to refuse to renew, revoke or suspend an insurance agent’s or broker’s license, if the licensee has violated any provision of the Insurance Law, been guilty of fraudulent or dishonest practices or demonstrated incompetency or untrustworthiness to act in such capacity as an agent or broker.

o Marketing Practices

• Prohibited Advertising:

Section 2122 prohibits an insurance agent from making or issuing in this state an advertisement purporting to make known the financial condition of the insurer, unless the advertisement conforms to Section 1313.

Section 1313 prohibits, among other things, any statement to the effect that the insurer’s practices are guaranteed by any other person, insurer or institution.

Regulation 34-A (11 NYCRR 219) sets forth the form, content and disclosure requirements of advertisements.

• Misrepresentations and Misleading Statements:
Section 2123(a) prohibits agents from:

- issuing or circulating any illustration, circular, statement or memorandum which misrepresents the terms, benefits or advantages of a life or annuity product;
- making any misleading estimates or false or misleading statement as to dividends, surplus share or additional amounts to be received in the future; and
- misrepresenting the financial condition of any insurer or the legal reserve system under which such insurer operates.

Section 4226(a) prohibits insurers from doing the same activities.

- Incomplete Comparisons:
  Section 2123(b) prohibits incomplete comparisons of any life or annuity product delivered in New York in a replacement transaction.
  Section 4226(a)(5) makes the prohibition on incomplete comparisons applicable to insurers.
  See also Regulation 60 [11 NYCRR 51].

- Replacements:
  Section 2123(c) provides that any replacement of individual life insurance policies or individual annuity contracts conform to standards promulgated by regulation that specify what constitutes replacement, notification of the proposed replacement to the insurer whose policies or contracts are intended to be replaced, timely exchange of illustrative and cost information and completion of a comparison of the proposed and replaced coverage, and a sixty-day period during which the policy or contract owner may return the policies or contracts and reinstate the replaced policies or contracts.
  Section 4226(a)(6) includes similar requirements for insurers.
  Regulation 60 [11 NYCRR 51] establishes minimum standards of conduct to be observed by insurers, insurance producers and other licensees in the replacement of life insurance policies and annuity contracts by (1) making available full and clear information in which an applicant can make an informed decision in his or her own best interest, (2) reducing the opportunity for misrepresentation and incomplete comparison in replacement situations, and (3) precluding unfair methods of competition and unfair practices.

- Acting for or Aiding Unauthorized Insurer:
  Section 2117 generally prohibits an agent from acting for or aiding an unlicensed or unauthorized insurer in any manner in effecting an insurance or annuity contract in this state.

- Rebating, Prohibited Inducements and Unfair Discrimination:
  Section 4224(a) prohibits insurers (through their agents) from making or permitting any unfair discrimination between individuals of the same class in rates, benefits or in the terms and conditions of coverage. Section 4224(c) prohibits agents from offering rebates or other inducements in connection with the sale of life or annuity products that are not specified in the policy or contract.
- Interdependent Sales:
  Section 4224(d) prohibits agents or representatives of the insurer from participating in any plan to offer or effect any life insurance or annuity products in this state as an inducement to or interdependent with the purchase of any goods, securities, commodities, services or subscriptions.

- Life and Annuity Cost Disclosure and Sales Illustrations:
  Section 3209 requires the promulgation of a regulation that specifies the form and content of the preliminary information and policy summary disclosures as well as standards governing the form, content and use of illustrations of individual life insurance, annuities and funding agreements and certain group life and group annuity products.
  Section 3209(b)(2) includes specific disclosure requirements for equity index products.
  Regulation 74 prescribes the disclosure requirements as to the form and content of the preliminary information and policy summary forms as well as sales illustrations. The disclosure required by the regulation should aid consumers in making informed decisions concerning their insurance purchases.

  o Producer Compensation Disclosure
    Regulation 194 requires insurance producers to disclose at or prior to the time of application information regarding the role of the insurance producer in the sale and the right of the applicant to obtain additional information regarding the compensation to be received by the insurance producer from the insurer or other third party and information regarding alternative quotes.

  o Variable Life Insurance Policies
    Regulation 77 requires insurers to deliver to the applicant a private placement offering memorandum in the case of a private placement variable life insurance policy or a prospectus included in a registration statement for the policy with any other variable life insurance policy. The Regulation details various information which must be included in the prospectus. In addition, insurers are required to mail to each variable life insurance policyholder reports detailing policy values and numerous other criteria relating to the policy as specified in the Regulation.

  o Life and Annuity Non-Guaranteed Elements
    Regulation 210 requires insurers to provide to a policy owner the current scale of non-guaranteed elements no later than the date of issue in a manner that will allow an easy comparison to the corresponding guarantees. Further, the Regulation requires insurers to provide a disclosure document containing information specified in the Regulation to a policy owner at least 60 days prior to any adverse change in the current scale of non-guaranteed elements.

Federal Law

SEC/FINRA Requirements

  o Advisors who are NASD or stock exchange members are subject to specific NASD and exchange rules addressing suitability. The NASD Rules of Fair Practice in subsection 2310, Section 2; Article III provide:
2310. Recommendations to Customers (Suitability)

(a) In recommending to a customer the purchase, sale or exchange of any security a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:

1. the customer's financial status;
2. the customer's tax status;
3. the customer's investment objectives; and
4. such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Please contact Fred Bodner or Ralph Spaulding if you would like additional information.