



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

August 7, 2018

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: 17 C.F.R. 240, Regulation Best Interest, S7-07-18

Dear Chairman Clayton:

The New York State Department of Financial Services (the “Department” or “New York”) appreciates the opportunity to comment on the U.S. Securities and Exchange Commission (“SEC”)’s proposed “Regulation Best Interest.” Among other roles, the Department is the insurance regulator supervising the financial condition and market conduct activities of insurers domiciled or conducting business in New York State and the licensing and conduct of more than 150,000 licensed annuity and life insurance producers conducting business in New York State. The Department supervises nearly 170 life insurance companies with assets exceeding \$3 trillion. In 2017, those insurers wrote approximately \$30 billion of annuity and life insurance premium in New York, making New York the second-largest insurance market in the U.S. for such products.

As you are aware, the Department – along with other state insurance regulators across the U.S. – shares concurrent regulatory jurisdiction with the SEC and the Financial Industry Regulatory Authority (“FINRA”) over those products that are both insurance products and registered securities, such as variable annuities and variable life insurance. For this reason, the Department has closely monitored the SEC and the FINRA’s actions related to suitability and the U.S. Department of Labor’s Conflict of Interest Rule (29 C.F.R. 2510) (“DOL Rule”). New York is also a member of the National Association of Insurance Commissioners’ (“NAIC”) Annuity Suitability Working Group, which is working concurrently on improvements to the national model regulation, and the NAIC’s Life Insurance and Annuities (A) Committee, which is the parent committee of the working group. New York has been a strong advocate for a robust best interest standard for consumers. While the NAIC has submitted its own comments on Regulation Best Interest, the Department respectfully disagrees that there is any consensus on the major issues related to a best interest standard at this early juncture in the NAIC process. There has been, and will continue to be, robust debate about these standards among state insurance regulators, with New York and other states advocating for a strong and consistent best interest standard across annuity and life insurance products.

The Department supported the DOL Rule and its various exemptions, which would have required those offering financial services products to act in the best interest of the consumer and adhere to

Impartial Conduct Standards, while still permitting the industry to offer proprietary products and use well-established forms of compensation such as commissions. As a result of the Department of Labor's rulemaking, the Department began to consider its own complementary rule in 2016. The Department sought to ensure that the DOL Rule's best interest consumer protections and the Impartial Conduct Standards were not solely limited to insurance products in tax-qualified accounts. The Department also believes that these essential consumer protections should extend to all annuity and life insurance products. For these reasons, on December 27, 2017, prior to the SEC's proposed rule, the Department proposed through its regulatory process a First Amendment to 11 NYCRR 224 (Insurance Regulation 187) to apply a best interest standard to all annuity and life insurance transactions. The Department engaged with the many interested parties on this topic, including consumer groups, insurers, agents, investment advisers, and broker-dealers. The Department carefully considered the feedback of the interested parties and the many comments received during two public comment periods of the regulation, the second of which concluded on June 16, 2018 and overlapped with the SEC's comment period for Regulation Best Interest. Following this rule-making process, on July 17, 2018, the Department promulgated its final First Amendment to Insurance Regulation 187, a copy of which is attached to this letter.

Much like the DOL Rule, any rule promulgated by the SEC or FINRA is limited to only those insurance products where the agencies share jurisdiction with the Department and state insurance regulators. For this reason, harmonization and coordination of regulations is important to maintain broad access to products and to avoid consumer confusion as to the standards of care. New York's Insurance Regulation 187 can provide a framework for the SEC to consider that is workable for the financial services industry, does not limit consumer access or choice, and provides a clear, unambiguous and consumer-focused best interest standard.

In particular, the Department believes that the current language in the SEC's Regulation Best Interest, which simply requires a provider to place the interest of the consumer "ahead of" the interest of the provider (Section 240.15l-1(a)(1)) and which permits firms to simply "identify and at a minimum disclose" conflicts of interest (Section 240.15l-1(a)(2)(iii)(A)), offers insufficient consumer protections from conflicted recommendations. Indeed, a requirement that a producer place the interest of the consumer "ahead of" the interest of the provider is not a "best" interest standard at all, since such a standard is not in the consumer's best interest in fact. Moreover, the Department does not believe that disclosure can cure conflicts of interest. Therefore, the Department strongly recommends that the SEC define what it means to act in the best interest of the consumer and that such a definition spell out clearly that *only* the interest of the consumer shall be considered when providing a recommendation to a consumer, as is done in Section 224.4(b)(1) of New York's Insurance Regulation 187. New York's regulation does this while explicitly permitting existing forms of compensation, so long as compensation or other incentives do not influence the recommendation, and the offering of proprietary products.

New York's Insurance Regulation 187 also requires, in a reasonable summary format, a disclosure to the consumer of all relevant suitability and product considerations, both favorable and unfavorable, that provide the basis for any recommendation. The SEC's Regulation Best Interest's care obligation under Section 240.15l-1(a)(2)(ii)(B) incorporates a similar analysis but does not require disclosure of any portion of that analysis. The Department believes such additional disclosure, along with

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the disclosures contemplated elsewhere in Regulation Best Interest and Form CRS Relationship Summary (S7-08-18), should be required in order to reduce consumer misunderstandings and dissatisfaction after a recommendation is made.

The Department appreciates the opportunity to provide feedback to the SEC on this important issue and looks forward to ongoing discussions.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria T. Vullo". The signature is fluid and cursive, with the first name "Maria" and last name "Vullo" clearly distinguishable.

Maria T. Vullo

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
FIRST AMENDMENT TO 11 NYCRR 224
(INSURANCE REGULATION 187)**

SUITABILITY AND BEST INTERESTS IN LIFE INSURANCE AND ANNUITY TRANSACTIONS

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 308, 309, 2103, 2104, 2110, 2123, 2208, 3209, 4224, 4525, and Articles 24 and 42 of the Insurance Law, do hereby promulgate the following First Amendment to Part 224 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 187), to take effect August 1, 2019, and to read as follows:

Section 224.0 Purpose.

(a) Insurance Law article 24 permits the superintendent to regulate trade practices in the business of insurance to prevent acts or practices that are unfair or deceptive. The Insurance Law, including sections 2103, 2104, 2110, 2123 and 2208, establishes standards of conduct for insurance producers, including that producers must act in a competent and trustworthy manner. The Insurance Law, including Article 42, also establishes standards of conduct for insurers, including fraternal benefit societies.

(b) This Part clarifies the duties and obligations of insurers, including fraternal benefit societies, by requiring them to establish standards and procedures for recommendations to consumers with respect to policies delivered or issued for delivery in this state so that any transaction with respect to those policies is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer at the time of the transaction. This Part also clarifies the nature and extent of supervisory controls that an insurer must maintain to achieve compliance with this Part.

(c) This Part further clarifies the duties and obligations of producers when making recommendations to consumers with respect to policies delivered or issued for delivery in this state to help ensure that a transaction is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer at the time of the transaction. The best interest standard set forth in this Part requires a producer, or insurer where no producer is involved, to adhere to a standard of conduct to be enforced by the superintendent, but does not guarantee or warrant an outcome.

§ 224.1 Applicability.

This Part shall apply to any transaction or recommendation with respect to a proposed or in-force policy.

§ 224.2 Exemptions.

Unless otherwise specifically included, this Part shall not apply to transactions involving:

(a) purchase of a policy where the application is solicited and received in response to a generalized offer by the insurer by mail, at the worksite, or under other methods without producer involvement, other than customer service, administrative support, or enrollment services, and where there is no recommendation made;

(b) a policy used to fund:

(1) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) a plan described by Internal Revenue Code sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(3) a government or church plan defined in Internal Revenue Code section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Internal Revenue Code section 457;

(4) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(5) a settlement or assumption of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(6) terminating employee pension plans or to assume liability of certain segments of ongoing plans, such as for terminated vested participants, or existing accrued benefits for currently active participants;

(c) any corporate or bank owned policy authorized by Insurance Law section 3205(d) where substantially all benefits under the policy are payable to the corporate or bank policy owner;

(d) any credit life insurance as defined in Part 185 of this Title (Insurance Regulation 27A) sold on a group basis and in compliance with Part 185 of this Title (Insurance Regulation 27A); or

(e) any life settlement contract as defined in and subject to Article 78 of the Insurance Law.

§ 224.3 Definitions.

For purposes of this Part:

(a) *Consumer* means the owner or prospective purchaser of a policy.

(b) *Insurer* means a life insurance company as defined in Insurance Law section 107(a)(28) or a fraternal benefit society as defined in Insurance Law section 4501(a).

(c) *Insurance producer* or *producer* means an insurance agent or insurance broker.

(d) *Policy* means a life insurance policy, an annuity contract, a certificate issued by a fraternal benefit society, or a certificate issued under a group life insurance policy or group annuity contract.

(e) *Recommendation* means one or more statements or acts by a producer, or by an insurer where no producer is involved, to a consumer that:

(1) reasonably may be interpreted by a consumer to be advice and that results in a consumer entering into or refraining from entering into a transaction in accordance with that advice; or

(2) is intended by the producer, or an insurer where no producer is involved, to result in a consumer entering into or refraining from entering into a transaction. A recommendation does not include general factual information to consumers, such as advertisements, marketing materials, general education information regarding insurance or other financial products and general administrative services to the consumer. A recommendation also does not include use of an interactive tool that solely provides a prospective consumer with the means to estimate insurance, future income, or other financial needs or compare different types of products or refer the consumer to a producer, provided that the interactive tool is not used by a producer, or an insurer where no producer is involved, to satisfy any requirement imposed by this Part.

(f) *Replace or replacement* means a transaction subject to Part 51 of this Title (Insurance Regulation 60) and involving a policy.

(g) *Suitability information* means:

(1) For a policy solely providing term life insurance with no cash value, information that is reasonably appropriate to determine the suitability of a recommendation commensurate with the materiality of the transaction to a consumer's financial situation at the time of the recommendation and the complexity of the transaction recommended, including some or all of the following, as relevant to the consumer:

(i) age;

(ii) annual income;

(iii) financial situation and needs, including the financial resources used for the funding of the policy;

(iv) financial objectives;

(v) intended use of the policy, including any riders attached thereto;

(vi) financial time horizon, including the duration of existing liabilities and obligations;

(vii) existing assets, including investment and insurance holdings;

(viii) willingness to accept non-guaranteed elements in the policy, including variability in premium, death benefit, or fees; and

(ix) any other information provided by the consumer which in the reasonable judgment of the producer, or the insurer where no producer is involved, is relevant to the suitability of the transaction.

(2) For any policy other than a policy solely providing term life insurance with no cash value, information that is reasonably appropriate to determine the suitability of a recommendation commensurate with the materiality

of the transaction to a consumer's financial situation at the time of the recommendation and the complexity of the transaction recommended, including some or all of the following, as relevant to the consumer:

- (i) age;
- (ii) annual income;
- (iii) financial situation and needs, including the financial resources used for the funding of the policy;
- (iv) financial experience;
- (v) financial objectives;
- (vi) intended use of the policy, including any riders attached thereto;
- (vii) financial time horizon, including the duration of existing liabilities and obligations;
- (viii) existing assets, including investment and insurance holdings;
- (ix) liquidity needs;
- (x) liquid net worth;
- (xi) risk tolerance;
- (xii) willingness to accept non-guaranteed elements in the policy, including variability in premium, cash value, death benefit, or fees;
- (xiii) tax status; and
- (xiv) any other information provided by the consumer which in the reasonable judgment of the producer, or the insurer where no producer is involved, is relevant to the suitability of the transaction.

(h) *Suitable* means in furtherance of a consumer's needs and objectives under the circumstances then prevailing, based upon the suitability information provided by the consumer and all products, services, and transactions available to the producer.

(i) *Transaction* means any sales transaction or in-force transaction.

(j) *Sales transaction* means the purchase or issuance of a policy, any replacement as defined by section 51.2(a) of Part 51 (Insurance Regulation 60), conversion, or any modification or election of a contractual provision with respect to an in-force policy that generates new sales compensation. New sales compensation does not include compensation provided to a producer when, after the initial premium or deposit under a policy, the consumer pays further premiums or deposits pursuant to the policy.

(k) *In-force transaction* means any modification or election of a contractual provision with respect to an in-force policy that does not generate new sales compensation. New sales compensation does not include compensation provided to a producer when, after the initial premium or deposit under a policy, the consumer pays further premiums or deposits pursuant to the policy.

§ 224.4 Duties of insurers and producers with respect to sales transactions.

(a) In recommending a sales transaction to a consumer, the producer, or the insurer where no producer is involved, shall act in the best interest of the consumer.

(b) The producer, or insurer where no producer is involved, acts in the best interest of the consumer when:

(1) the producer's or insurer's recommendation to the consumer is based on an evaluation of the relevant suitability information of the consumer and reflects the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use under the circumstances then prevailing. Only the interests of the consumer shall be considered in making the recommendation. The producer's receipt of compensation or other incentives permitted by the Insurance Law and the Insurance Regulations is permitted by this requirement provided that the amount of the compensation or the receipt of an incentive does not influence the recommendation;

(2) the sales transaction is suitable; and

(3) there is a reasonable basis to believe:

(i) the consumer has been reasonably informed of various features of the policy and potential consequences of the sales transaction, both favorable and unfavorable, such as the potential surrender period and surrender charge, any secondary guarantee period, equity-index features, availability of cash value, potential tax implications if the consumer sells, modifies, surrenders, lapses or annuitizes the policy, death benefit, mortality and expense fees, cost of insurance charges, investment advisory fees, policy exclusions or restrictions, potential charges for and features of riders, limitations on interest returns, guaranteed interest rates, insurance and investment components, market risk, any differences in features among fee-based and commission-based versions of the policy, and the manner in which the producer is compensated for the sale and servicing of the policy in accordance with Part 30 of this Title (Insurance Regulation 194) and Insurance Law section 2119;

(ii) the consumer would benefit from certain features of the policy, such as tax-deferred growth of any cash values, annuitization, or death or living benefit;

(iii) the particular policy as a whole, the underlying subaccounts to which funds are allocated at the time of the sales transaction, and riders and similar product enhancements, if any, are suitable for the particular consumer based on the consumer's suitability information; and

(iv) in the case of a replacement of a policy, the replacement is suitable including taking into consideration whether:

(a) the consumer will incur a surrender charge, increased premium or fees, decreased coverage duration, decreased death benefit or income amount, adverse change in health rating, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), be subject to tax implications if the consumer surrenders or borrows from the policy, or be subject to increased fees, investment advisory fees, premium loads or charges for riders and similar product enhancements;

(b) the consumer would benefit from policy enhancements and improvements, such as a decreased premium or fees, increased coverage duration, increased death benefit or income amount; and

(c) the consumer has had another policy replacement, in particular, a replacement within the preceding 36 months.

(c) In making a recommendation, a producer, or an insurer where no producer is involved, may weigh multiple factors that are relevant to the best interests of the consumer including, but not limited to, the benefits provided by the policy, the price of the policy, the financial strength of the insurer, and other factors that differentiate products or insurers.

(d) Prior to the recommendation of a sales transaction, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(e)(1) Except as provided under paragraph (2) of this subdivision, neither a producer nor an insurer shall have any obligation to a consumer under subdivision (a) and (b) of this section or under subdivision (a) of section 224.6 of this Part related to any transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate material information provided by the consumer;

(iii) a consumer refuses to provide relevant suitability information and the transaction is not recommended; or

(iv) a consumer decides to enter into a sales transaction that is not based on a recommendation of the insurer or the producer.

(2) An insurer's effectuation of a sales transaction with respect to its policies subject to paragraph (1) of this subdivision shall be suitable based on all the information actually known to the insurer at the time of the sales transaction.

(f) A producer, or an insurer where no producer is involved, shall at the time of a recommendation:

(1) disclose to the consumer in a reasonable summary format all relevant suitability considerations and product information, both favorable and unfavorable, that provide the basis for any recommendations;

(2) document the basis for any recommendation made, subject to subdivisions (a) and (b) of this section and the facts and analysis to support that recommendation;

(3) document, if relevant, the consumer's refusal to provide suitability information, if any; and

(4) document that a sales transaction is not recommended if a consumer decides to enter into a sales transaction that is not based on the producer's or insurer's recommendation.

(g) A producer shall not make a recommendation to a consumer to enter into a sales transaction unless the producer has a reasonable basis to believe that the consumer has the financial ability to meet the financial commitments under the policy.

(h) A producer shall not make a recommendation to a consumer to enter into a sales transaction about which the producer has inadequate knowledge.

(i) Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

(1) truthfully responding to an insurer's request for confirmation of suitability information;

(2) filing a complaint with the superintendent; or

(3) cooperating with the investigation of a complaint.

(j) A producer shall not use a title or designation of financial planner, financial advisor or similar title unless the producer is properly licensed or certified and actually provides securities or other non-insurance financial services. Although a producer may state or imply that a sales recommendation is a component of a financial plan, a producer shall not state or imply to the consumer that a recommendation to enter into a sales transaction is comprehensive financial planning, comprehensive financial advice, investment management or related services unless the producer has a specific certification or professional designation in that area.

(k) Any requirement applicable to a producer pursuant to this Part shall apply to every producer who materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support based on generic client information, or the provision of education or marketing material, does not constitute participating in the making of a recommendation.

(l) Nothing in this Part shall be construed to prohibit the payment to a producer of any type or amount of cash or non-cash compensation including pension and welfare benefits, and any other form of compensation that is otherwise permitted under the Insurance Law and the Insurance Regulations.

(m) A producer may limit the range of policies recommended to consumers based on a captive or affiliation agreement with a particular insurer, where the producer prominently discloses to each consumer in writing prior to a recommendation, in a form acceptable to the superintendent, the nature of the agreement and the circumstances under which the producer will and will not limit the recommendations. For example, without limitation, these circumstances may include where a producer primarily recommends policies of a particular insurer and secondarily recommends policies from one or more other insurers when: (1) the primary insurer does

not offer a policy that meets the consumer's needs or objectives, (2) the type of policy in the best interest of the consumer is not available from the primary insurer, (3) the underwriting criteria of the primary insurer are not favorable for the consumer, or (4) the offer made by the primary insurer is not acceptable to the consumer. The producer shall adhere to the conditions in the disclosure with each consumer. The disclosure is insufficient if it merely states that the producer may limit recommendations without specific disclosure of the extent to which recommendations are, in fact, limited.

§ 224.5 Duties of insurers and producers with respect to in-force transactions.

(a) In recommending an in-force transaction to a consumer, the producer, or the insurer where no producer is involved, shall act in the best interest of the consumer.

(b) The producer, or insurer where no producer is involved, acts in the best interest of the consumer when:

(1) the producer's or insurer's recommendation to the consumer reflects the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use under the circumstances then prevailing. Only the interests of the consumer shall be considered in making the recommendation. The producer's receipt of compensation or other incentives permitted by the Insurance Law and the Insurance Regulations is permitted by this requirement provided that the amount of the compensation or the receipt of an incentive does not influence the recommendation; and

(2) there is a reasonable basis to believe the consumer has been reasonably informed of the relevant features of the policy and potential consequences of the in-force transaction, both favorable and unfavorable.

(c) A producer shall not use a title or designation of financial planner, financial advisor or similar title unless the producer is properly licensed or certified and actually provides securities or other non-insurance financial services. Although a producer may state or imply that a sales recommendation is a component of a financial plan, a producer shall not state or imply to the consumer that a recommendation to enter into a sales transaction is comprehensive financial planning, comprehensive financial advice, investment management or related services unless the producer has a specific certification or professional designation in that area.

(d) Any requirement applicable to a producer pursuant to this Part shall apply to every producer who materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support based on generic client information, or the provision of education or marketing material, does not constitute participating in the making of a recommendation.

(e) A producer shall not make a recommendation to a consumer to enter into an in-force transaction about which the producer has inadequate knowledge.

§ 224.6 Insurer responsibility and supervision.

(a) In addition to the requirements of subdivisions (a) and (b) of section 224.4 of this Part and except as provided in subdivision (e) of section 224.4 of this Part, an insurer shall not effectuate a sales transaction with respect to its policies unless there is a reasonable basis to believe that the sales transaction is suitable based on the suitability information provided by the consumer and without regard to the availability of products, services,

and transactions of companies other than the insurer. This subdivision (a) shall not apply to a sales transaction that results from the exercise of a contractual right in a policy.

(b)(1) An insurer shall establish, maintain, and audit a system of supervision that is reasonably designed to achieve the insurer's and producers' compliance with subdivisions (a) through (k) of section 224.4 of this Part, including standards and procedures for:

(i) the collection of a consumer's suitability information with respect to sales transactions involving the insurer's policies;

(ii) the documentation and disclosure of the basis for any recommendation with respect to sales transactions involving the insurer's policies;

(iii) the review of complaints received by the insurer regarding recommendations inconsistent with the best interest of the consumer;

(iv) the auditing and/or contemporaneous review of recommendations to monitor producers' compliance with subdivisions (a) and (b) of section 224.4 of this Part with respect to the insurer's policies. An insurer may use a reasonable risk-based approach to audit and/or contemporaneously review producers' recommendations to identify recommendations of the greatest risk of violation of subdivisions (a) and (b) of section 224.4 of this Part so long as the approach does not focus solely on recommendations posing the greatest risk with no auditing or review of other recommendations.

(2) With respect to a sales transaction that results from the exercise of a contractual right in a policy, an insurer may comply with subparagraphs (b)(1)(i) and/or (b)(1)(ii) of this section by relying on a written certification of compliance with subparagraphs (b)(1)(i) and/or (b)(1)(ii) provided by the producer.

(c) An insurer may contract with a third party to establish and maintain a system of supervision for recommendations of sales transactions involving the insurer's policies.

(d)(1) An insurer may maintain within and across product lines variations in compensation or other incentives that comply with the Insurance Law and the Insurance Regulations provided that the insurer's compensation and incentive practices, when taken as a whole, are designed to avoid recommendations by producers that are not in the best interest of consumers.

(2) A difference in compensation and incentives based solely on the amount of premium paid among policies shall not be deemed to violate paragraph (1) of this subdivision.

(e) An insurer shall be responsible for ensuring that every producer recommending any transaction with respect to the insurer's policies is adequately trained to make the recommendation in accordance with the provisions of this Part, but an insurer shall not be required to warrant that a producer is acting in the consumer's best interest.

(f) An insurer shall establish and maintain procedures designed to prevent financial exploitation and abuse. For purposes of this subdivision, "financial exploitation and abuse" means improper use of an adult's funds,

property or resources by another individual, including fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.

(g) An insurer of an in-force policy shall provide to a consumer all policy information reasonably requested by the consumer.

(h) Where a producer is authorized by an insurer to offer different versions of an insurer's product, one with a fee-based structure and one with a commission-based structure, an insurer shall provide to the consumer a comparison, in a form acceptable to the superintendent, showing the differences between the products. An insurer may also include additional information related to the differences in the producer's compensation structure for the different versions of the insurer's product.

(i) In the case of a proposed replacement:

(1) the replaced insurer shall provide to a producer all relevant policy information that is necessary for the evaluation of the replacement; and

(2) the replacing insurer shall provide policy information in accordance with Part 51 of this Title (Insurance Regulation 60), regardless of whether there exists any specific section for the inclusion of the information within the disclosure statement set forth in Appendices 10A and 10B of Part 51.

(j) The insurer shall take appropriate corrective action for any consumer harmed by a violation of this Part by the insurer, the producer, or any third party with whom the insurer contracts. In determining any penalty or other disciplinary action against an insurer, the superintendent may consider as mitigation any appropriate corrective action taken by the insurer, or whether the violation was part of a pattern or practice on the part of the insurer.

§ 224.7 Recordkeeping.

All records required or maintained under this Part, whether by a producer, an insurer, or other person shall be maintained in accordance with Part 243 of this Title (Insurance Regulation 152).

§ 224.8 Violations.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in Insurance Law section 2402(c), except where such act or practice shall be a defined violation, as defined in Insurance Law section 2402(b), and in either such case shall be a violation of Insurance Law section 2403.

§ 224.9 Effective date

The amendments to this Part made on July 17, 2018 shall be effective August 1, 2019. As of the effective date, insurers and producers shall comply with the requirements of this Part for any transaction with respect to an annuity contract. Six months from the effective date, insurers and producers shall comply with the requirements of this Part for any transaction with respect to a life insurance policy.