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The Company You Keep®

Via email: securitiesregs-comments@sec.state.ma.us

January 7, 2020

The Honorable William Francis Galvin
Office of the Secretary of the Commonwealth
Attn: Proposed Regulations – Fiduciary Conduct Standard
Massachusetts Securities Division
One Asburton Place, Room 1701
Boston, MA 02108

Dear Secretary Galvin:

New York Life appreciates the opportunity to provide comments on the Massachusetts Securities Division's ("Division") Proposed Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives ("Proposal") dated December 13, 2019. On June 26, 2019, New York Life also provided comments on the Division's preliminary proposal.

New York Life Insurance Company is a mutual life insurance company operating across the country to provide life insurance and retirement solutions to individuals and institutions. As a mutual company, we have no shareholders. Instead, our interests are aligned with those of our policy owners, and we operate for their benefit. We provide life insurance, annuity, and investment products to more than 6.5 million individuals and families, including more than 160,000 in the Commonwealth of Massachusetts.

As we noted in our letter of June 26, 2019, in general we support new regulations that require producers to act in the best interest of their retail customers when offering them annuities or securities products. However, the Division's revised Proposal remains overbroad. If the Proposal is adopted in its current form, we are concerned it will lead to a reduction of consumer choices, which will ultimately hurt the very consumers it is attempting to protect.

Comments to the Proposal from ACLI/LIAM Joint Letter Dated July 26, 2019 Should Be Considered

The revised Proposal did not take into consideration the comments made in a July 26, 2019 joint comment letter from The American Council of Life Insurers (ACLI) (which advocates on behalf of 280-member companies dedicated to providing products and services that promote consumers' financial and retirement security) and the Life Insurance Association of Massachusetts (LIAM). That joint comment letter noted that the Proposal will:

- Harm small and moderate retirement savers by reducing access to advice and products needed for financial and retirement security;
- Reduce choice and increase total fees;
- Conflict with Reg BI adopted by the SEC;
- Contradict the SEC and FINRA's approach to regulating non-cash compensation; and
- Deter broker-dealers from offering services in Massachusetts.

As the ACLI has noted, Reg BI strikes the right note – arming people with the information they need to make good purchasing decisions while safeguarding their access to a broad selection of solutions to secure their retirement. Protecting consumers does not mean limiting their choice of products and services.

We encourage the Division to consider again the ACLI/LIAM comments before proceeding with the Proposal.

Life Insurance and Annuities Should Be Specifically Exempted from the Proposal

We agree with the Securities Industry and Financial Markets Association (SIFMA) that the Proposal should be amended to expressly provide that life insurance and annuity products, both fixed and variable, do not fall under the scope of the Proposal. We also agree with the January 7, 2020 comment letter from the Committee of Annuity Insurers (CAI), which notes that the focus of the Massachusetts Uniform Securities Act (“Securities Act”) is the promotion and the sale of securities. The Securities Act does not provide the Secretary with the authority to regulate insurance products. We join the CAI in asking the Division to acknowledge that variable annuities and other variable insurance products would be excluded in any final rulemaking, and that annuities are not considered securities under the Securities Act.

The Proposal Should Acknowledge that Sales of Proprietary Products or Sales from a Limited Range of Products Do Not Presumptively Conflict with the Proposal

Many customers choose to do business with New York Life because we have been in existence for 175 years providing life insurance, annuity, and investment products to generations of policy owners. Customers work with New York Life agents, in part, because of New York Life's reputation for financial strength and the knowledge that we stand behind our products and will be there to meet the long-term promises we make to our policyholders. We are acutely aware that customers have many options to do business with other companies. Therefore, we are vigilant in ensuring a high level of customer care and service.

To meet those customer expectations, New York Life has developed numerous proprietary products for sale to our customers. We continually invest in our career agency system to ensure that our agents are fully trained regarding these proprietary products and how they can serve the best interests of consumers. These investments also encompass technology and sales supervision designed to achieve compliance with regulatory requirements and best practices for the benefit of our policy owners. Finally, our focus on career agency and proprietary products plays a critical role in reinforcing our financial strength and mutuality. Our career agents help educate consumers on the essential importance of quality and long-term solvency when evaluating an insurance purchase. The advice they provide empowers us to be cautious in the design and pricing of our products, helping us protect our reputation and keep long-term promises to our policy owners.

The SEC's Regulation Best Interest ("Reg BI"), the new NAIC model suitability rule, New York Regulation 187, and the Obama administration's original Department of Labor fiduciary rule all have recognized explicitly that a focus on proprietary products is not per se inconsistent with an agent's duty to act in the best interest of the client. We recommend the Proposal be amended, consistent with these other regulatory authorities, to acknowledge that such recommendations are not prohibited, and do not presumptively breach the Proposal's fiduciary duty standard.

The Proposal Should Not Punish Productivity

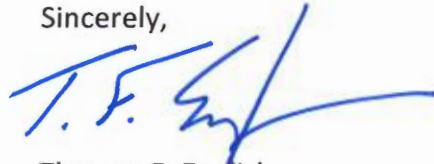
Reg BI distinguishes reasonable and neutral measures of performance and overall productivity from the conflicts that can be created when time-limited sales incentives improperly favor specific product choices. Programs to promote overall productivity should not be viewed as per se repugnant to the principle of loyalty to a customer. Instead, broad-based incentives toward overall productivity benefit consumers. These incentives motivate financial professionals to address the financial security needs of consumers, but do not incentivize the sale of a specific solution over other alternatives, irrespective of the consumer's situation and needs.

The Proposal language, as drafted, could be read to prohibit firms from using overall sales productivity as a factor in evaluating employment performance or determining cash and non-cash compensation. The provisions against implied or express quota requirements or special incentive programs are also broad and undefined. To avoid these and other problems, we encourage the Division to harmonize the Proposal with Reg BI.

Thank you for this opportunity to provide our comments on the Proposal. We strongly urge the Division to take full account of our comments and the comments of the ACLI, LIAM, NAIFA, CAI, and SIFMA, among others, in determining the next steps for its fiduciary conduct Proposal. We also encourage the Division to allow the SEC's Reg. BI to be fully implemented

before moving forward with the Proposal, so that any Massachusetts law be complementary, rather than inconsistent, with federal law.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. F. English', with a long horizontal stroke extending to the right.

Thomas F. English
Senior Vice President, Deputy
General Counsel and Chief Insurance
Counsel