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The Company You Keep®

Via e-mail: securitiesregs-comments@sec.state.ma.us

July 26, 2019

Office of the Secretary of the Commonwealth
Attn: Proposed Regulations – Fiduciary Conduct Standards
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Dear Secretary Galvin:

We are grateful for the opportunity to respond to the Massachusetts Securities Division's preliminary solicitation of public comment on a proposed fiduciary conduct standard for broker-dealers, agents, investment advisers and investment adviser representatives.

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 policyowners in the Commonwealth of Massachusetts.

In general, we support new regulations that require producers to act in the best interest of retail consumers when offering annuities and securities products to them. However, the Securities Division's draft fiduciary conduct proposal is not appropriately tailored to accommodate the business model of life insurers and their broker-dealers. If the proposal is adopted in the form proposed, we are concerned that it would harm retail consumers, restricting their access to retirement products and cost-effective advice.

Specifically, we share the concerns outlined in MassMutual's comment letter and the joint comment letter from the American Council of Life Insurers (ACLI) and the Life Insurance Association of Massachusetts (LIAM). We are particularly concerned with the proposed requirement that producers select the "best option." By focusing on *outcome* rather than *process*, this aspect of the proposal contradicts longstanding principles of fiduciary law and practice. A requirement to achieve a pre-defined outcome invites an unfair evaluation of producer conduct

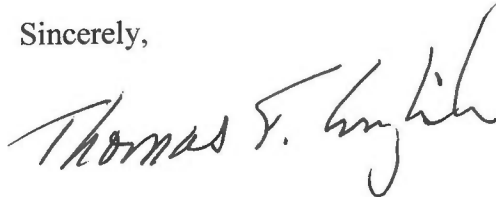
with the benefit of hindsight. This will have the very detrimental unintended consequence of reducing consumer choices as firms retrench in response to this requirement.

We are also concerned with the requirements that a broker-dealer, agent or adviser must avoid all conflicts of interest and make recommendations "without regard to" any interest they might have. Both of these standards are unworkable. It is impossible to avoid all conflicts of interest. If the Securities Division were to adopt a "without regard to" standard, it would be setting the bar impossibly higher than the fiduciary standard under ERISA, Dodd-Frank, or the Investment Adviser's Act of 1940. It effectively would impose a new standard that is inconsistent with the duty of loyalty as interpreted under ERISA. That duty of loyalty has been consistently interpreted to permit a fiduciary to benefit from a transaction so long as that benefit is incidental to a decision that is in the best interests of the participants. A much more workable approach is the one adopted under the SEC's Regulation Best Interest, requiring financial professionals and firms to put a client's interest ahead of their own interest.

We therefore strongly urge the Securities Division to take full account of the comments of MassMutual and ACLI and LIAM in determining the next steps for its fiduciary conduct proposal.

We are grateful for your attention to our comments.

Sincerely,

A handwritten signature in black ink, reading "Thomas F. English". The signature is written in a cursive, flowing style with a large, prominent "T" and "E".

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