



August 7, 2018

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

*Via Electronic Mail:* rule-comments@sec.gov

Re: File No. S7-07-18: Regulation BI and File No. S7-08-18: Customer Relationship Summary

Dear Mr. Fields:

New York Life appreciates the opportunity to comment on the Commission's proposals to: (1) adopt a best interest standard of conduct for broker-dealers, and (2) require broker-dealers and registered investment advisers to provide a relationship summary to retail investors.

We support the Commission's decision to adopt a best interest standard that requires financial professionals to place the interests of consumers ahead of their own interests. The Commission's proposal enhances consumer protection while taking a principle-based approach that preserves consumer access to different advice and compensation models. We support this approach.

Similarly, we support the Commission's goal of ensuring clear communication to retail consumers regarding the key differences and characteristics of the advice and compensation models that are available to them. The delivery of a standardized relationship summary to retail consumers provides a sensible way to achieve this objective.

While we support the Commission's objectives and overall approach, a few elements of the proposals would benefit from clarification to address unique features of the life insurance and annuity business model. Specifically, we recommend that the Commission provide interpretive guidance to better define a broker-dealer's obligation to mitigate conflicts of interest in the context of life insurance and annuity products. We also recommend adjustments to the customer relationship summary to ensure complete and accurate disclosure to consumers regarding key aspects of these insurance products.

Set forth below is additional context regarding our company, a detailed discussion of the issues we have identified, and our proposed solutions to address those issues.

### **About New York Life**

Founded in 1845, we are the nation's oldest and largest mutual life insurance company. As a mutual company, we have no shareholders. We are managed for the benefit of our policy owners, and our interests are fully aligned with them. We are singularly focused on helping Americans of all ages and income levels achieve financial security. Below are a few key facts regarding our company:

- We provide life insurance, annuity and investment products to more than 6.5 million individuals and families. Our life insurance products help families overcome the burden of a loved one passing away, and our annuities provide guaranteed lifetime income at a time when strong employer pension programs are becoming increasingly rare.
- New York Life maintains the highest possible financial strength ratings currently awarded to any U.S. life insurer from all four of the major credit rating agencies.<sup>1</sup> Our financial strength ensures that we can honor the long-term guarantees embedded in our insurance products.
- We offer our proprietary life insurance and annuity products primarily through a network of 12,000 licensed career agents located in all 50 states. Our career agents reflect the diversity of America. In 2017, over half of New York Life’s new agents were women or individuals who represent the African-American, Chinese, Latino, Korean, South Asian and Vietnamese communities in the United States.
- Our career agency system helps us better serve consumers in the following ways:
  - We provide our career agents with extensive training, support and supervision, empowering them to serve the interests of their clients more effectively. The company invests heavily in technology and sales supervision to achieve compliance with regulatory requirements and best practices for the benefit of our policy owners.
  - While we serve Americans across the financial spectrum, our career agency force helps us focus on the middle market. Approximately 55% of our annuity customers have household incomes of less than \$80,000 per year, and the median first-year premium for our agency-sold annuities is approximately \$60,000.

**The Commission’s Principle-Based Approach & Conflict Mitigation**

The Commission has not proposed a specific, prescriptive definition of “best interest.” Instead, the question of best interest turns on “the facts and circumstances of the particular recommendation and the particular retail customer.”<sup>2</sup> A firm and its financial professionals can satisfy the best interest standard by complying with three principle-based obligations: (1) reasonable disclosure of material facts and conflicts of interest; (2) the exercise of reasonable diligence, care, skill and prudence; and (3) reasonable policies and procedures to disclose material conflicts of interest, and mitigate material conflicts arising from financial incentives.

We support these basic elements of the best interest standard, and agree that a principle-based approach is appropriate. This approach leaves room for a variety of business and compensation models that offer choices to investors and preserve investor access to the capital markets. Both commission-based and fee-based advice are permitted so long as reasonable disclosure, care and conflict mitigation obligations are met. The general “reasonable” standard ensures that

---

<sup>1</sup> A.M. Best (A++), Fitch (AAA), Moody’s Investors Service (Aaa), Standard & Poor’s (AA+).

<sup>2</sup> Regulation Best Interest, 83 Fed. Reg. 21587 (May 9, 2018).

compliance solutions can be tailored to match different business models. As the Commission notes, “there is no one-size-fits-all framework.”<sup>3</sup>

However, a broad, principle-based approach also can lead to ambiguity. There are a few areas where additional clarification of the Commission’s intent would be helpful. We encourage the Commission to address this ambiguity through FAQs or other interpretive guidance, and suggest two areas below that would benefit from additional clarification.

### *1. Proprietary Insurance Products*

The broadly defined requirement for “reasonable” mitigation raises questions regarding recommendations involving proprietary insurance products. On the one hand, the Commission’s proposal makes clear that it does not prohibit the practice of recommending proprietary products. On the other hand, the proposal explains that financial incentives to sell proprietary products create a conflict of interest that must be mitigated, noting that disclosure alone is insufficient. To mitigate the conflict, the proposal instructs broker-dealers to consider adopting policies to “minimize compensation incentives to favor . . . proprietary or preferred provider products.” This guidance, however, would benefit from additional definition of the extent to which companies are expected to “minimize incentives.”

The registered representatives of our brokerage firm offer New York Life variable life insurance and annuities, but do not offer the variable insurance products of other insurers. This proprietary distribution structure provides an effective means of minimizing conflicts of interest in the context of variable insurance products, serving the interests of our clients in several ways:

- Unlike mutual funds and other similar investment products, variable life and annuity products are not commoditized. Varying product features, costs and insurer financial strength play a significant role in determining the long-term value to consumers of different variable life and annuity products. Apples-to-apples product comparisons among insurers can be challenging. Because our registered representatives offer New York Life variable insurance products, but do not offer the variable products of other insurers, we are able to eliminate potential conflicts generated by differences in compensation among other insurers’ variable products.
- We also believe this limitation is appropriate because New York Life’s financial strength backs the insurance guarantees within our variable products. Unlike a mutual fund or equity investment, financial strength is critical to the value of a long-term insurance guarantee. Our superior financial position serves the best interests of consumers.
- As a mutual company, our business is structured to prioritize the interests of our policy owners. We have invested heavily to ensure strong supervision and consistent service to consumers of our variable insurance products. Our career agents are thoroughly trained and supervised to ensure they can explain and service these products, an advantage for consumers

---

<sup>3</sup> Regulation Best Interest, 83 Fed. Reg. 21618 (May 9, 2018).

in a marketplace that includes an array of complex, long-duration products from multiple carriers of varied financial strength.

We ask that the SEC confirm, through FAQs or other interpretive guidance, that an insurer may appropriately focus its career agents on the distribution of variable insurance products that the insurer manufactures, so long as limitations on the universe of available products are disclosed to consumers and supervisory procedures are in place to ensure that a variable insurance product is in the client's best interest.

## *2. Business Conferences*

Proposed Regulation Best Interest also indicates that conflicts of interest arising from conferences must be reasonably mitigated. In this context, the proposal notes that single product sales contests create conflicts that may best be eliminated. We agree that it is inappropriate to use a contest or other non-cash compensation to incentivize the sale of a specific investment or variable insurance product over other available alternatives, irrespective of a consumer's situation and needs.

The Commission's proposal, however, should distinguish inappropriate incentives designed to push specific products from broad-based, responsibly managed non-cash compensation. Every year, like many other insurers, we invite many of our career agents to New York Life-sponsored business conferences. Our business conferences comply strictly with FINRA requirements and nationwide limits on non-cash compensation that apply to us under the New York insurance law. The qualification criteria are not product specific, and instead are based on total production across a wide array of products. To qualify, a career agent must meet a threshold of sales across the full range of products that we offer, including life insurance, annuities, long-term care insurance and advisory accounts, as well as proprietary and non-proprietary mutual funds.

In this way, the criteria do not encourage our career agents to favor one product or product category over other choices, without properly considering a consumer's needs. This incentive structure satisfies FINRA's current non-cash compensation requirements, and we believe it serves the best interests of consumers. We ask that the Commission provide clarification to this effect.

## **Tailoring Form CRS to Insurance**

While we support the concept of a succinct, standardized relationship summary, the Commission's proposed instructions would not capture significant elements of a business model that focuses on both investments and insurance. We recommend several changes to the instructions for Form CRS to ensure that consumers receive clear and accurate disclosure regarding the key features of variable insurance products and their distribution.

Set forth below are specific changes that we believe should be incorporated into the required disclosure:

- Accurately Describing Variable Annuities. Proposed Form CRS currently requires a firm to describe the key features of a full-service brokerage account, and compare those features

with an investment advisory account. While our brokerage model provides clients the option of buying mutual funds or opening a securities trading account, consumers are also sometimes interested in securing insurance features such as principal protection, death benefits or a guaranteed stream of income through a variable annuity. These products do not fit neatly within the dichotomy in the Commission's proposed relationship summary. Specifically:

- A client does not necessarily open or maintain a "brokerage account" when purchasing an annuity. Suggesting that a securities trading account is necessary would be confusing to consumers.
- The form currently highlights the commissions charged in a brokerage account, noting the firm's "incentive to encourage you to engage in transactions." Fees for variable annuities, however, recur periodically, and are based on the variable annuity account value and the insurance features that we provide. These fees do not create an incentive to trade. In fact, we do not charge consumers for changing investment options within their variable annuities.

To ensure accurate disclosure and a full consumer understanding of available options, the Commission should include space within the proposed relationship summary to describe the significant features and cost structure of variable annuities. These sections should cover the same conceptual subject matter as the Commission's prescribed disclosure regarding full-service brokerage, while describing key features of variable annuities and their cost structure. The prescribed disclosure could draw from the Commission's published educational material regarding variable annuities.<sup>4</sup>

- Limitations on Product Offerings and Cost. If a firm or financial professional significantly limits the types of investments available in an account, Form CRS currently must state: "We offer a limited selection of investments. Other firms could offer a wider range of choices, some of which might have lower costs." While we agree that limits on available products should be disclosed to consumers, the Commission's exclusive emphasis on cost in this prescribed sentence does not provide consumers of insurance products with clear and complete information.

When an investment product is identical among firms, and involves little to no long-term credit risk, the price of the product may be among the most important factors a consumer should consider. However, life insurance and annuities are built on the strength of long-term guarantees. In this context, price is not necessarily the most important factor.

---

<sup>4</sup> See Variable Annuities: What You Should Know, U.S. Securities and Exchange Commission Office of Investor Education and Advocacy, available at <http://www.sec.gov/reportspubs/investor-publications/investorpubsvarannttyhtm.html>.

In many cases, the lowest priced insurance product may not serve the consumer's best interest. A junk bond may carry a high coupon, but a lower yielding AAA bond may be a better investment for someone focused on long-term financial security. In the same way, our long-term solvency is critical to ensuring that we honor the long-term insurance promises we make to consumers.

Similarly, our career agency system and focus on New York Life variable products enables the training needed to explain insurance product features to consumers. Proposed Regulation Best Interest accommodates this imperative, noting that a broker-dealer cannot satisfy its duty of care "by simply recommending the least expensive or least remunerative security without any further analysis ..."<sup>5</sup> Form CRS should do the same.

We recommend that the Commission retain a requirement to disclose limits on the universe of available products, while allowing further context so that firms can describe the full scope and impact of those limits. For example, the disclosure could read as follows:

"We offer variable annuities issued by our insurance company affiliate, but do not offer variable annuities issued by other insurers. Other firms may offer annuities from other insurers, with different features and costs. The financial strength of other insurers may also differ. We focus on annuities issued by our affiliate because of the financial strength of the insurance guarantees it offers."

- Comparing Variable Annuities with Other Options. Proposed Form CRS requires a standalone broker-dealer to include a detailed comparison between an advisory account that charges asset-based fees and a full-service brokerage account that charges commissions for securities trades. This comparison does not provide an accurate depiction of relevant choices for a consumer who wishes to obtain insurance features through an annuity.

For that reason, we recommend that the instructions allow for a brief, consumer-friendly discussion of potential choices that encompass both brokerage and advisory accounts, as well as annuities. We believe that the relationship summary should serve as a conversation starter that promotes consumer understanding. When a consumer is interested in insurance protection, the scope of the conversation should not be limited to the differences between full-service brokerage and investment advisory accounts.

- Variable Life Insurance. Insurance protection provides the primary motivation for considering a variable life insurance product. A consumer considering variable life insurance should compare that policy with fixed life insurance alternatives that can meet their insurance needs. The disclosure we provide about life insurance is governed by state insurance laws. A comparison with a variable annuity, brokerage account or advisory account will not be relevant to the consumer's life insurance objectives, and could be confusing or misleading.

---

<sup>5</sup> Regulation Best Interest, 83 Fed. Reg. 21588 (May 9, 2018).

The Commission can address this issue in a straightforward manner by clarifying that delivery of Form CRS is not required when a consumer is acquiring only life insurance. Alternatively, a separate, tailored summary that encompasses both fixed and variable life insurance solutions could be provided when a consumer is interested in life insurance protection.

- Compensation Disclosure. The instructions to Form CRS require a statement prompting the consumer to ask for personalized disclosure of fees and costs. The Commission’s guidance also notes that further layered conflict of interest disclosure, delivered outside the relationship summary, should include additional discussion of fees, charges and compensation that builds upon the summary.

We support the delivery of this type of disclosure. However, in the context of long-duration insurance products, it is important to ensure that compensation and cost disclosure is provided in a format that allows an accurate comparison with other product choices. When considered over the expected duration of a life insurance or annuity product, a commission-based model is often less expensive than an asset-based model. To ensure that any comparative disclosure is accurate, and help customers understand the impact, we recommend that the Commission clarify that insurers may amortize commissions and other upfront charges over the average duration of variable insurance products.

- Disclosure Events. When a firm has any legal or disciplinary history, the proposed Form CRS requires inclusion of the following statement: “we have legal and disciplinary events.”<sup>6</sup> This statement prejudices larger, established firms that will usually have a small number of disclosure events to report for current or former registered representatives. Smaller or newer firms will more often be able to avoid this statement, even though they may not have the same compliance infrastructure and could, in some cases, pose a higher risk of misconduct.

We understand and support the Commission’s desire to prompt consumers to research the background of brokerage firms and financial professionals. However, rather than mandate a statement that could prejudice larger firms and minimize the risk for smaller firms, we recommend that Form CRS prompt consumers to research the background of firms and financial professionals through online tools, while highlighting that those tools are designed to uncover relevant legal and disciplinary events.

For example, the disclosure could read as follows:

“You should review our background and the background of your financial professional. Visit [Investor.gov](https://www.investor.gov) for a free and simple search tool to research our firm and our financial professionals. This search tool will show any legal or disciplinary events.”

---

<sup>6</sup> Form CRS Relationship Summary, 83 Fed. Reg. 21447 (May 9, 2018).

\* \* \* \* \*

Thank you for reviewing our comments, and for the opportunity to provide our feedback. If you have any questions or need additional information regarding this submission, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sheila Davidson", with a long horizontal flourish extending to the right.

Sheila Kearney Davidson  
Executive Vice President,  
Chief Legal Officer & General Counsel  
New York Life Insurance Company