

**From:** [Eric Dinallo](#)  
**To:** [Cellupica, Paul](#); [Cortes, Sara](#); [Russell, Emily Westerberg](#)  
**Cc:** [Rachel Goldberg](#)  
**Subject:** Guardian Life Regulation BI Follow Up  
**Date:** Wednesday, February 06, 2019 3:28:05 PM  
**Attachments:** [image001.png](#)

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Paul, Sara and Emily,

On behalf of Guardian, I want to thank you again for meeting with us on November 29, 2018. As we discussed during that meeting and as outlined in our August 7, 2018 comment letter, Guardian supports the SEC's proposed Regulation Best Interest ("Regulation BI"). This note is in follow-up to key questions posed in our November meeting regarding Regulation BI. Please do share with others on your teams as appropriate.

Guardian believes that any registered firm's non-cash compensation program constructed in a manner consistent with FINRA's non-cash compensation rules should be presumed compliant with the proposed financial incentive mitigation provisions of Regulation BI. Moreover, we note that Guardian's non-cash compensation programs also must adhere to other applicable federal and state laws, including Internal Revenue Code provisions regarding statutory employment, New York Insurance Law's limitations on insurance agent compensation and New York Regulation 187 which sets suitability and best interest standards in life insurance and annuity transactions.

Guardian primarily distributes its proprietary, non-registered insurance products (e.g., whole life insurance, term life insurance, disability insurance, and fixed annuities) through its statutory employee field force ("Field Representatives"). The Internal Revenue Service ("IRS") dictates that a life insurance salesperson who is a so-called "statutory employee" is limited to selling insurance primarily for one company. Compensation and incentive programs for Guardian Field Representatives are further regulated by New York Insurance Law Section 4228, which sets limits on various types of compensation for insurance agents in New York. To the extent that Guardian Field Representatives sell securities, they do so as Registered Representatives of Park Avenue Securities, LLC ("PAS"), a registered broker-dealer and investment adviser and a wholly-owned Guardian subsidiary. As a FINRA member firm, PAS is bound by FINRA's non-cash compensation rules, which apply in addition to the constraints imposed by federal and state law described above. We believe that FINRA-compliant non-cash compensation programs serve to mitigate any inappropriate financial incentive elements the Commission identified as a concern in its Regulation BI proposal release, particularly when such programs also comply with IRS rules regarding statutory employees and provisions of New York Insurance Law limiting agent compensation. Accordingly, Guardian encourages the Commission to deem non-cash compensation programs offered in compliance with FINRA Rules also in compliance with Regulation BI.

Additionally, per your request for Guardian's reaction to the RAND study of investor testing of Form CRS, we agree that the intent of Form CRS is to help investors make more informed decisions about their investment choices. As such, it is imperative that the form is clear. Currently, the Relationship Summary makes certain assumptions that do not fully account for the circumstances of certain investors (e.g., investors who do not have brokerage accounts with a broker-dealer). Particularly because participants in the survey understood the form to tell them that there are two different types of services or accounts, we remain concerned that the form may inadvertently oversimplify things. There are ways to solve for a lack of clarity without adding to length of the form, such as a Q&A format that could simply guide the reader to more nuanced information that is most relevant to them.

Thank you again for your time and considering our comments and suggestions. Please do not hesitate to reach out if I can be of further assistance.

Respectfully,

Eric

**Eric R. Dinallo**

EVP, General Counsel

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