

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

NATIONAL INTEGRITY LIFE INSURANCE COMPANY,

Respondent,

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CONSENT ORDER

WHEREAS, the New York State Department of Financial Services (“DFS” or “Department”) identified a practice arising from the replacement of a deferred annuity contract with an immediate income annuity contract that violated disclosure and suitability requirements of New York Regulations 60 and 187;

WHEREAS, the Department commenced an investigation (“Investigation”) concerning the conduct of a number of life insurance companies doing business in New York, including National Integrity Life Insurance Company (“National Integrity”), regarding the replacement of deferred annuity contracts with immediate annuity contracts from the period of January 1, 2011 through December 31, 2016 (the “Relevant Period”);

WHEREAS, the Department found that National Integrity did not obtain appropriate annuitization information for replaced deferred annuities and did not disclose adequate suitability information to contract holders so that contract holders could compare the payout amounts available under the deferred annuity and the proposed immediate annuity and make a fully informed decision as to whether to replace their deferred annuities;

WHEREAS, the Department found that National Integrity issued replacement immediate annuity contracts without the Annuitization (as that term is subsequently defined in this Consent Order) information for replaced deferred annuities necessary to determine suitability;

WHEREAS, the Department found that National Integrity did not adequately train agents and brokers regarding how to conduct proper suitability reviews and provide disclosures to contract holders when replacing their deferred annuities with National Integrity's immediate annuities, and did not maintain an adequate supervisory system over its agents and brokers to ensure their compliance with applicable regulations;

WHEREAS, the Department found that certain contract holders were harmed by National Integrity's failure to obtain suitability information and to disclose information regarding their deferred annuities, namely that contract holders could annuitize their existing deferred annuities and that those contract holders' deferred annuities, if annuitized, would have paid more than the contract holders earned from their replacement immediate annuities from National Integrity; and

WHEREAS, National Integrity has fully cooperated with the Department's Investigation and revised its Disclosure Statements and procedures after the Department identified these improper practices.

NOW, THEREFORE, the Department and National Integrity are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing.

FINDINGS

The findings of the Department's Investigation are as follows:

Respondent

1. National Integrity is a wholly-owned subsidiary of Integrity Life Insurance Company, an Ohio life insurance company that is owned by The Western and Southern Life

Insurance Company, which in turn is a wholly-owned subsidiary of Western & Southern Financial Group, Inc. The ultimate parent of National Integrity is Western & Southern Mutual Holding Company, an Ohio mutual holding company.

2. National Integrity is authorized to write life insurance, annuities, and accident and health insurance, and is licensed to transact business in the District of Columbia and eight states, including New York State.

3. National Integrity's principal products sold during the Relevant Period were fixed and variable annuities, including single premium deferred and immediate annuities, and flexible premium variable annuity contracts.

4. Independent broker-dealer firms, independent agents, and financial institutions market National Integrity's products.

5. National Integrity's home office is in Greenwich, New York.

Terms

6. For purposes of this Consent Order, the following terms shall have the meanings set forth herein:

- a. "Annuitization" refers to the conversion of the actual accumulation amount of a deferred annuity into a series of annuity payments to the contract holder. Upon Annuitization, the annuity payments are calculated as the greater of the guaranteed annuity purchase rates in the contract applied to the actual accumulation amount or the company's current single premium immediate annuity rates applied pursuant to Insurance Law § 4223(a)(1)(E).

- b. “Deferred annuity” refers to an annuity contract in which periodic income payments are not scheduled to commence during the first 13 months after the contract is issued.
- c. “Disclosure Statement” means the form prescribed in Appendix 10B to Insurance Regulation 60, which, in connection with the issuance of a replacement annuity, requires accurate completion of certain disclosures and information, including a side-by-side comparison of the deferred annuity and proposed replacement immediate annuity, among other things.
- d. “Immediate annuity” refers to an annuity contract in which the first periodic income payment begins in 13 or fewer months after the contract is issued. The immediate annuity is usually purchased with a single premium.
- e. “Replacement Contracts” refers to new annuities purchased and delivered or issued for delivery in New York by National Integrity during the Relevant Period, and National Integrity knew, as part of the transaction, that existing annuity contracts had been or were likely to be lapsed, surrendered, partially surrendered, or otherwise terminated, as provided in the definition of replacement Regulation 60, 11 NYCRR 51.2(a).

Findings

7. An annuity is a contract between a purchaser and an insurance company in which the purchaser agrees to make a lump sum payment or series of payments in return for regular annuity payments that begin either immediately (within the first 13 months) or, for a deferred

annuity, at some future date. The goal of annuity payments is to provide a steady stream of income for a specified period of time or for the remainder of one or more lives.

8. Individuals often purchase annuities because they can offer tax-deferred savings, the ability to invest and protect existing savings, and a way to generate a steady stream of income.

9. Deferred annuities issued in previous decades often offered contract holders more favorable guaranteed purchase rates than are currently available for immediate annuities. As a result, some contract holders may receive thousands of dollars less in lifetime retirement income by replacing their deferred annuities instead of annuitizing them.

10. National Integrity marketed and solicited its immediate annuities to consumers, including to deferred annuity contract holders, and replaced deferred annuities with immediate annuities during the Relevant Period.

11. The Department's Investigation found that certain of National Integrity's producers proposed replacing contract holders' existing deferred annuities with National Integrity's immediate annuities without obtaining important information about the amount of guaranteed income available if the existing deferred annuity contracts were annuitized and disclosing that information to contract holders when they were considering replacement transactions.

12. National Integrity did not require or ensure that contract holders received for their review a comparison between the income benefit that contract holders would derive from their existing deferred annuity contracts and the income benefit available from National Integrity's proposed Replacement Contracts.

13. As a result, National Integrity did not satisfy its obligations regarding the suitability of the Replacement Contracts, as required by Regulation 187, 11 NYCRR 214:

- a. National Integrity failed to make reasonable efforts to obtain contract holders' complete suitability information, which included information about existing assets, such as the amount of guaranteed income available if the existing deferred annuity contracts were annuitized, prior to the recommendation of a Replacement Contract;
- b. National Integrity failed to properly consider whether a proposed Replacement Contract was suitable for a contract holder, including whether the contract holder would lose existing benefits available through the annuitization option in the existing deferred annuity;
- c. National Integrity issued Replacement Contracts recommended to contract holders without having a reasonable basis to believe the annuities were suitable based on the contract holders' complete suitability information, which included the required Annuitization information for replaced deferred annuities;
- d. National Integrity did not establish a supervisory system reasonably designed to achieve its compliance with Regulation 187; and
- e. National Integrity did not ensure that every producer recommending its immediate annuities was adequately trained to make those recommendations.

14. The Investigation found that the Disclosure Statements provided by National Integrity to contract holders were inadequate because they did not contain information, including

periodic payment amounts available, regarding the Annuitization of the existing deferred annuities.

15. Moreover, the Disclosure Statements did not show that producers adequately discussed with contract holders the disadvantages of replacing their existing deferred annuities, including losing the opportunity to annuitize their deferred annuities, potentially on more advantageous terms than the proposed Replacement Contracts.

16. Because of these inadequacies and omissions, contract holders received materially incomplete information regarding the advantages and disadvantages of replacing their existing deferred annuities and were therefore unable to make fully informed decisions with respect to the Replacement Contracts.

17. The Investigation found that, given the more favorable guaranteed annuity purchase rates on many of the replaced deferred annuity contracts, some contract holders receive less retirement income from the Replacement Contracts than if the contract holders had annuitized their deferred annuities.

18. When the Department brought its concerns regarding suitability and disclosure in replacement transactions to the attention of National Integrity, National Integrity fully cooperated with the Department's Investigation. National Integrity further revised its Disclosure Statement to address the Department's concerns, and sought and received the Department's approval of its revised form.

Violations

19. Based on the foregoing, the Department finds that National Integrity violated Insurance Regulations 187 and 60.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by National Integrity and the Department that:

Monetary Penalty

20. National Integrity shall pay a civil monetary penalty of two hundred forty thousand dollars (\$240,000) to DFS within ten days of the Effective Date of this Consent Order. The payment shall be in the form of a wire transfer in accordance with instructions provided by DFS.

21. National Integrity agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order. National Integrity further agrees that it will not claim, seek, or receive indemnification or reimbursement of the civil monetary penalty from any other person or entity.

Injunctive Relief

22. National Integrity shall comply with Regulations 187 and 60.

Remediation and Restitution

23. National Integrity represents to the Department that it sold or issued 476 Replacement Contracts during the Relevant Period.

24. National Integrity will obtain information necessary regarding the replaced deferred annuities and the Replacement Contracts to ensure compliance with Insurance Regulations 187 and 60.

25. National Integrity will conduct a preliminary analysis, make recommendations to the Department regarding restitution and remediation for the contract holders of the Replacement Contracts, and will administer the payment and notice provisions discussed below in paragraphs 26–31 (the “Review and Restitution Process”).

26. To complete the Review and Restitution Process, National Integrity will compare the income options and payment amounts available under each replaced deferred annuity contract with the income options and payment amounts of each Replacement Contract.

27. National Integrity will submit to the Department for its review and approval all annuity contract comparison information and a recommendation for each of the Replacement Contracts. The recommendations will place each Replacement Contract in one of three categories:

- a. *Remediation:* contract holders of the Replaced Contracts shall receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred annuities and the contract holders are receiving less income from the Replacement Contracts than they would have received if their replaced deferred annuities were annuitized;
- b. *No remediation:* contract holders of the Replaced Contracts will not receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred annuities and the contract holders are receiving either the same or more income from the Replacement Contracts than they would have received if they had retained and annuitized their deferred annuities; or

- c. *Indeterminable*: the Replacement Contracts and the replaced deferred annuities are materially different in their income options and contract features, and the contracts cannot be readily compared.

28. National Integrity will recommend the type and amount of restitution and remedies for affected contract holders:

- a. *Remediation*: for contract holders whose Replacement Contracts pay less than they would have received through the Annuitization of their replaced deferred annuities, National Integrity shall determine the amount the contract holder would have received if, from the time of replacement to the Effective Date of this Consent Order, the contract holder had annuitized the replaced policy. National Integrity shall also determine and will include in this amount the applicable interest required by Insurance Law § 3214. National Integrity shall prepare a notice, subject to DFS's approval, that will accompany checks for the amounts owed to contract holders in this category that explains why contract holders are receiving the checks including, at a minimum, the comparison of income options and payment amounts between the replaced deferred annuities and the Replacement Contracts. Lastly, National Integrity shall determine the monthly (or other frequency) difference between the payments from Replacement Contracts and the replaced deferred annuities, an amount that will be added to each such contract holder's monthly (or other frequency) annuity payments within 30 days of the Effective Date of this Consent Order and stated clearly on the notice.

- b. *Indeterminable*: Subject to the Department's review and approval, National Integrity will identify certain contract holders in this category and provide restitution as appropriate. National Integrity shall prepare a notice, subject to DFS's approval, that will accompany checks for the amounts designated for contract holders in this category that explains, at a minimum, the differences in income options and payout amounts between the replaced deferred annuity and the Replacement Contracts. National Integrity shall prepare a separate notice, subject to DFS's approval, that will be sent to certain other contract holders, which may result in payment of appropriate amounts to these contract holders.

29. Upon the Department's review and approval of National Integrity's recommendations under paragraph 28, National Integrity shall, within 30 days or other time period approved by DFS, deposit in the facilities of the U.S. Post Office, for delivery by prepaid first-class mail to all affected contract holders or their beneficiaries, notices and checks, or other payment means approved by the Department, in the required amounts. All checks must be valid for six months.

30. For any payment or notice to a contract holder or beneficiary that is returned as undeliverable or not deposited within six months, National Integrity shall conduct a reasonable search for a current address. Should the search show a more current address, National Integrity shall re-issue a check valid for six months in the amount of the returned or undeposited check, and/or re-send the notice to the current address within fifteen days.

31. If a contract holder or beneficiary did not cash his or her check before the expiration date of the check or the check was returned after National Integrity re-sent it as

described in paragraph 30, National Integrity shall follow all applicable provisions of the New York Abandoned Property Law, including all reporting, mailing, and remittance requirements.

32. Upon the commencement of the process described in paragraphs 29–31, National Integrity will provide to the Department quarterly reports that detail the number of checks mailed, the total amount of individual checks, and the number of checks deposited, undelivered, or not deposited.

33. National Integrity may contract with a third party to conduct the Review and Restitution Process. Alternatively, the Department, in its discretion, may at any time select an independent third-party administrator (“TPA”) to conduct the Review and Restitution Process. National Integrity will retain the TPA after the Department’s review and approval of the retainer agreement. National Integrity shall be fully and solely responsible for all proper fees, expenses, and disbursements of the TPA in connection with the Review and Restitution Process provided for in this Consent Order and the TPA’s retainer agreement.

Breach of the Consent Order

34. In the event that the Department believes National Integrity to be materially in breach of the Consent Order (“Breach”), the Department will provide written notice to National Integrity of the Breach. Within ten business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, National Integrity must appear before the Department and shall have an opportunity to rebut the Department’s assertion that a Breach has occurred and, to the extent pertinent, demonstrate that any such Breach is not material or has been cured.

35. National Integrity understands and agrees that its failure to appear before the Department to make the required demonstration within the specified period set forth in paragraph

34 is presumptive evidence of National Integrity's Breach. Upon a finding of Breach, the Department has all the remedies available to it under the New York Insurance Law, Financial Services Law, or other applicable laws and may use any and all evidence available to the Department for all ensuing hearings, notices, orders, and other remedies that may be available under the New York Insurance Law, Financial Services Law, or other applicable laws.

Other provisions

36. National Integrity represents and warrants, through the signatures below, that the terms and conditions of this Consent Order are duly approved, and execution of this Consent Order is duly authorized.

37. If National Integrity defaults on any of its material obligations under this Consent Order, DFS may terminate the Consent Order, at its sole discretion, upon ten days' written notice to National Integrity. In the event of such termination, National Integrity expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding against National Integrity, however denominated, related to the Consent Order, or from using in any way statements, documents, or other materials produced or provided by National Integrity prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.

38. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by National Integrity. To the extent that representations made by National Integrity are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.

39. All notices, reports, requests, certifications, and other communications to either party pursuant to this Consent Order shall be in writing and shall be directed as follows:

For the Department:

Anna MacCormack
Deputy Director, Civil Investigations
Financial Frauds & Consumer Protection
New York Department of Financial Services
One State Street
New York, New York 10004-1511

Laura Sarli
Assistant Counsel, Civil Investigations
New York Department of Financial Services
One State Street
New York, New York 10004-1511

Mollie Blanchard-Cearley
Attorney and Excelsior Fellow
New York Department of Financial Services
One State Street
New York, New York 10004-1511

For National Integrity:

Kevin L. Howard
Senior Vice President and General Counsel
National Integrity Life Insurance Company
400 Broadway
Cincinnati, Ohio 45202-3341

Bruce W. Maisel
Vice President, Chief Compliance Officer
National Integrity Life Insurance Company
400 Broadway
Cincinnati, Ohio 45202-3341

40. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

41. National Integrity waives its right to further notice and hearing in this matter as to any allegations of past violations relating to the subject matter of this Consent Order up to and including its Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside of the Department.

42. This Consent Order may not be amended except by an instrument in writing signed on behalf of both parties to this Consent Order.

43. This Consent Order constitutes the entire agreement between the Department and National Integrity and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

44. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Consent Order.

45. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation as against National Integrity with respect to the identified Replacement Contracts. The Department will not take any further action against National Integrity with respect to the Replacement Contracts for the conduct detailed herein that was found to have violated the Insurance Law and Regulations provided that National Integrity complies fully with the terms of the Consent Order.

46. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by both of the parties hereto and the

Consent Order is So Ordered by the Superintendent of Financial Services or her designee (“Effective Date”).

WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: 
Christopher B. Mulvihill
Deputy Superintendent, Civil Investigations
Financial Frauds & Consumer Protection

December 5, 2018

By: 
Nancy Ruskin
Executive Deputy Superintendent
Financial Frauds & Consumer Protection

December 5, 2018

NATIONAL INTEGRITY LIFE INSURANCE COMPANY

By: 
Kevin L. Howard
Senior Vice President and General Counsel

December 4, 2018

By: 
Bruce W. Maisel
Vice President, Chief Compliance Officer

December 4, 2018

**THE FOREGOING IS HEREBY APPROVED.
IT IS SO ORDERED.**



MARIA T. VULLO
Superintendent of Financial Services

December 5, 2018