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MAY 08 2017

Office of Superintendent
NYS Dept of Financial Services



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

AXA EQUITABLE LIFE INSURANCE COMPANY,

No. 2017-0062-S

Respondent.

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STIPULATION & CONSENT ORDER

WHEREAS, the Department of Financial Services (the "Department") conducted a Financial & Market Conduct Examination (the "Examination") of the affairs of AXA Equitable Life Insurance Company (hereinafter "Respondent") for the period from January 1, 2011 through December 31, 2015 and issued its Report on the Examination dated May 8, 2017.

WHEREAS, this Stipulation & Consent Order contains the Department's findings and the relief agreed to by the Department and Respondent.

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

Findings

1. Respondent is a domestic insurance company authorized to transact life, annuities and accident and health insurance business in this State pursuant to Section 1113(a) of the New York Insurance Law.
2. Respondent, for the time period 2011 to 2015, in certain instances:
 - a) failed to notify the Department of two tax allocation agreements;

- b) with respect to replacement transactions in the state of New York, failed to disclose all of the fees associated with the Guaranteed Minimum Income Benefit (“GMIB”) and/or Guaranteed Minimum Death Benefit (“GMDB”) riders on the Disclosure Statement for variable annuity replacements;
- c) with respect to replacement transactions in the state of New York, failed to examine the Disclosure Statement and ascertain that it was accurate and met the requirements of the Insurance Law;
- d) with respect to replacement transactions in the state of New York, failed to state in the Disclosure Statement the upfront premium charges to clients replacing a whole life policy with a universal life or variable universal life policy; and inaccurately described that the replacing universal life or variable universal life policy had a “lower cost of insurance” than the replaced policy when the premium for the new policy was higher than the replaced policy;
- e) with respect to replacement transactions in the state of New York, failed to furnish the insurer whose policy was replaced, a copy of the proposal, including the sales material and the completed Disclosure Statement within the required time frame;
- f) with respect to replacement transactions in the state of New York, engaged in practices that prevented the orderly working of Insurance Regulation 60 in accomplishing its intended purpose in the protection of policyholders and contractholders;
- g) failed to obtain a proper HIV consent form prior to subjecting an applicant to an HIV-related test;
- h) failed to provide compliant preliminary information and policy summary documents to consumers that purchased a variable universal life insurance policy during the examination period;
- i) effectuated life insurance policies on the lives of insureds between the ages of 0 and 14 ½ years of age for amounts that exceed the limits allowed by Law;
- j) altered approved policy forms and failed to submit the altered forms to the Superintendent for approval prior to use;
- k) used a policy form that was not submitted to the Superintendent for approval prior to use;

- l) failed to establish procedures to reasonably confirm the death of an insured and to locate beneficiaries within ninety days after the identification of a potential match made by a death index cross check;
 - m) failed to use the latest available updated version of the death index to cross-check every policy issued and any account established under or as a result of such policy;
 - n) failed to provide the insured with an EOB that included a description of the time limit, place and manner in which an appeal of a denial of benefits must be brought under the policy and a notification that failure to comply with such requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection;
 - o) failed to maintain the initial premium loan notification letter sent to the policyholder; and
 - p) allowed its agents to receive payments from purchasers of the Company's fee-based variable annuity product
3. Respondent's violations during the aforementioned time period contravened New York Insurance Law.

Violations

4. By reason of the foregoing, as reflected in the Department's Report on the Examination, Respondent violated the following:
- Insurance Regulation 60 (3rd Amendment), 11 NYCRR Section 51.6(b)(4); Insurance Regulation 60 (2nd Amendment), 11 NYCRR Section 51.6(b)(3); Insurance Regulation 60 (3rd Amendment), 11 NYCRR Section 51.7(a); Insurance Regulation 60 (2rd Amendment), 11 NYCRR Section 51.6(b)(4); Insurance Regulation 60 (3rd Amendment), 11 NYCRR Section 51.7(b); Insurance Regulation No. 200, 11 NYCRR Section 226.4(b)(1); and Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(8); and New York Insurance Law Sections 308(a)(1); 2611(a); 3207(b); 3209(b)(1)(A) and (B); 3201(b)(1); 3240(f)(1); 3234(b)(7); and 2101(a).

Agreement

IT IS HEREBY UNDERSTOOD AND AGREED by Respondent, its successors and assigns (on behalf of its agents, representatives, employees, parent company, holding company, and any corporation, subsidiary or division through which Respondent operates) that:

5. Respondent will fully rectify all violations cited herein, provide full restitution to all affected policyholders and demonstrate to the Department's satisfaction that it has taken the necessary corrective action. Within sixty (60) days from Respondent's signing of this Stipulation & Consent Order, the Company shall provide to the Department two (2) detailed remediation plans which provide for restitution to policyholders or their beneficiaries, where applicable, for each violation set forth in Paragraphs 2(c) through (f) and Paragraphs 2(l) through (m) of this Stipulation & Consent Order (the "Violations"). The remediation plans are subject to the Department's approval in its sole discretion. The Department may, as a condition of its approval, impose additional remediation requirements to a plan if necessary to satisfactorily rectify the Violations. The plans shall include provisions for, but not limited to:

- i. "Plan 1." Plan 1 will apply to all internal and external permanent life insurance policy replacements in the state of New York processed between January 1, 2011 and April 30, 2017 for which the Company committed a Violation. The Company will provide accurate Disclosure Statements to policyholders who replaced an existing policy but did not receive a complete and accurate Disclosure Statement. For each policyholder receiving an accurate Disclosure Statement as a result of Plan 1 who affirms that he or she would not, in the past, have replaced his or her policy had he or she received an accurate Disclosure Statement, the Company shall make each such policyholder whole by offering each such policyholder an opportunity to return to the replaced policy or, if not feasible, by making restitution (by cash payment or credit to the policy equal to the greater of (a) 5% of the exchange proceeds received by the Company in connection with the policy replacement; or (b) the surrender charges incurred by policyholders at the time of the replacement (without interest) in connection with the replacement of the policy. If the Company cannot accurately identify the amount of the surrender charges for the replaced policy, the Company shall pay the amount described in (a). If the replacement policy issued by the Company is no longer in force, the Company shall pay the required

amount pursuant to the formula above plus an additional amount equal to any surrender charges paid by the policyholder to the Company upon the subsequent surrender of its policy.

- ii. "Plan 2." Plan 2 will require the Company to confirm the death of all insureds or policyholders, perform a diligent search to locate the beneficiary of such proceeds and make prompt restitution to the beneficiary for benefits (including interest) from the date of death to the date of payment, for which the Company is liable for in accordance with all applicable laws, rules and regulations. If the Company cannot locate the beneficiary within ninety (90) days of a potential match, the Company shall continue to perform such due diligence searches for the beneficiary until the benefits escheat in accordance with applicable state law.
- iii. Both Plan 1 and Plan 2 shall require the Company to rectify all violations cited herein and provide full restitution where applicable on a rolling basis, with all remediation, including restitution payments, commencing no later than sixty (60) days from the approval of Plan 1 and Plan 2. On a monthly basis, the Company shall provide to the Department a written update reflecting its remediation progress, including all restitution payments made to policyholders. Plan 1 remediation is to conclude no later than eighteen (18) months from the date of Respondent's signing of this Stipulation & Consent Order, and Plan 2 remediation is to conclude no later than twelve (12) months from the date of from Respondent's signing of this Stipulation & Consent Order. At the conclusion of each plan, the Company shall provide a certificate signed by an officer of the Company authorized to bind the Company that the plan has been successfully completed.

Penalty

6. Within seven (7) days of the execution of this Stipulation & Consent Order, Respondent shall pay a civil penalty of Three Million Seven Hundred Eighty-Eight Thousand Two Hundred Eighty-Nine Dollars (\$3,788,289.00). Respondent 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 Stipulation & Consent Order.

7. The above referenced payment shall be payable to the New York State Department of Financial Services account in accordance with the Department's instructions.

Breach of the Stipulation & Consent Order

8. In the event that the Department believes that Respondent has breached this Stipulation & Consent Order, including the satisfaction of full restitution and remedy to consumers under Plan 1 and Plan 2, the Department will provide written notice of such breach to Respondent and Respondent must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Superintendent, appear before the Department and have an opportunity to rebut the evidence, if any, on the issue of whether a breach has occurred and, to the extent pertinent, to demonstrate that any such breach is not material or has been cured.
9. The Department and Respondent understand and agree that Respondent's failure to appear before the Department to make the required demonstration within the period set forth in Paragraph 8 of this Stipulation & Consent Order is presumptive evidence of Respondent's breach. Upon a finding of breach, the Department has all the remedies available to it under New York law and may use any and all evidence available in connection with all ensuing hearings, notices, orders and other remedies that are available.

Other Provisions

10. If Respondent defaults on the payment of its monetary obligations under this Stipulation & Consent Order, the Department may terminate the Stipulation & Consent Order at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondent expressly agrees and acknowledges that this Stipulation & Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding against Respondent, however denominated, related to the subject matter of this Stipulation & Consent Order, or from using in any way the statements, documents, or other materials produced or provided

by Respondent prior to or after the date of this Stipulation & Consent Order, except as may otherwise be provided in a written agreement with the Department.

11. The Department has agreed to the terms of this Stipulation & Consent Order based on, among other things, representations made to the Department by Respondent. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Stipulation & Consent Order is voidable by the Superintendent in his or her sole discretion.
12. Upon request by the Department, Respondent shall provide all non-privileged documentation and information reasonably necessary for the Department to verify compliance with this Stipulation & Consent Order.
13. All notices, reports, requests and other communications to any party pursuant to this Stipulation & Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York State Department of Financial Services
One State Street, 19th Floor
New York, NY 10004-1511
Attention: Scott Fischer, Executive Deputy Superintendent for Insurance

If to the Company:

AXA Equitable Life Insurance Company
1290 Avenue of the Americas
New York, New York 10104
Attention: Dave S. Hatten, Senior Executive Director and General Counsel

14. This Stipulation & 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.
15. This Stipulation & Consent Order may not be amended except by an instrument in writing signed on behalf of both of the parties to this Stipulation & Consent Order.

16. Respondent agrees that no provision of the Stipulation & Consent Order is subject to review in any court or tribunal outside the Department.
17. In the event that one or more provisions contained in this Stipulation & 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 provision of this Stipulation & Consent Order.
18. This Stipulation & Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto or their designee and approved by the Superintendent of Financial Services.
19. This Stipulation & Consent Order constitutes the entire agreement between the Department and Respondent and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Stipulation & Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Stipulation & Consent Order has been relied upon by any party to this Stipulation & Consent Order.

AXA Equitable Life Insurance Company
1290 Avenue of the Americas
New York, New York 10104

By: 

Dave S. Hattem
Senior Executive Director and General Counsel

Dated: 

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: Scott Fischer Dated: 5/8/17

Scott Fischer
Executive Deputy Superintendent for Insurance

THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.

By: Maria T. Vullo Dated: 5/8/17

Maria T. Vullo
Superintendent of Financial Services