

**In the Matter of**

**ATHENE ANNUITY AND LIFE COMPANY  
ATHENE HOLDING LTD.,**

**Respondents.**

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**CONSENT ORDER**

WHEREAS, the New York State Department of Financial Services (the “Department”) commenced an investigation in January 2019 of Athene Annuity and Life Company (“AAIA”) and Athene Holding Ltd. (“AHL” and together with AAIA and their respective subsidiaries and affiliates, and their respective agents, officers, directors, representatives, employees, successors and assigns, “Respondents”) pursuant to the New York Insurance Law (“Insurance Law”) and Financial Services Law (the “Investigation”);

WHEREAS, the Department investigated whether AAIA was doing an insurance business in New York without a New York license;

WHEREAS, the Investigation concluded that AAIA had done an insurance business in New York without a New York license in connection with its pension risk transfer (“PRT”) business;

WHEREAS, the Investigation concluded that AAIA representatives, some of whom were located in New York, had exchanged thousands of e-mail communications and other contacts with businesses (including some located in New York) and communicated with New York individuals (including through a web portal and call center);

WHEREAS, this Consent Order contains the Department's findings, and the relief agreed to by the Department and Respondents; and

NOW, THEREFORE, the Department and Respondents are willing to resolve all matters involving Respondents' PRT business in lieu of proceeding by notice and a hearing.

### **FINDINGS**

The findings of the Department are as follows:

#### **Relevant Entities**

1. AAIA is a life insurance company domiciled in Iowa. AAIA is not licensed or otherwise authorized to do an insurance business in the State of New York. AAIA is a wholly owned subsidiary of AHL, which is domiciled in Bermuda.

2. Athene Annuity & Life Assurance Company of New York ("AANY") is a wholly owned subsidiary of AAIA, domiciled and licensed to do an insurance business in the State of New York.

#### **Legal Background**

3. Insurance Law § 1102 prohibits any person, firm, association, corporation, or joint-stock company from doing an insurance business in New York unless appropriately licensed pursuant to the Insurance Law or exempted from licensing by the Insurance Law. Insurance Law § 1101(b)(1) states that certain acts in New York, effected by mail from outside New York or otherwise, by any person or entity, constitute doing an insurance business in New York. Such acts include making, or proposing to make, as insurer, any insurance contract, including either issuance or delivery of a policy or contract of insurance to a resident of New York or to any firm, association, or corporation authorized to do business in New York, or

solicitation of applications for any such policies or contracts; in addition to collecting any premium, membership fee, assessment, or other consideration for any policy or contract of insurance.

4. An unauthorized insurer may not make telephone calls, provide access to web portals (save for limited circumstances described in Insurance Law § 1101(b)(8)), or engage in any other manner of communication with any person in New York from outside New York, other than by mail (including email). In addition, an unauthorized life insurer may not solicit, negotiate, or sell group annuity contracts (“GACs”) through in-person meetings, telephone calls, mail, emails, access to web portals, or any other form of communication from a location in New York.

5. Insurance Law § 1102(a) provides that any person, firm, association, corporation, or joint-stock company that transacts the business of insurance in New York without an appropriate license or exemption shall, in addition to any other penalty provided by law, forfeit as a penalty the sum of one thousand dollars for the first violation and two thousand five hundred dollars for each subsequent violation.

6. The Department has stated that each instance of impermissible solicitation, negotiation, or sale of insurance by an unauthorized insurer or of improper policy servicing by an unauthorized insurer is a separate violation of Insurance Law § 1102(a).

### **Factual Background**

7. A defined benefit pension plan sponsor is responsible for, among other things, administering the plan and ensuring payouts to plan participants. A pension plan sponsor is often the employer offering pension plan participation to its employees. The long-term obligation of paying out pension plan benefits to participants represents a risk which is sometimes transferred

to another party in a transaction referred to as a pension risk transfer (“PRT Transaction”). In a typical PRT Transaction, the plan sponsor transfers all or a portion of the assets and liabilities of a defined benefit pension plan to a life insurance company, which, in turn, issues a GAC obligating the life insurance company to make benefit payments to plan participants or to the plan sponsor. If the GAC obligates the life insurance company to make benefit payments to plan participants directly, the plan participants receive individual annuity certificates representing their rights to benefits under the GAC.

8. PRT Transactions vary in size but are often large, complex transactions that require substantial time to complete, and involve extensive communications between the life insurance company issuing the GAC and the original plan sponsor and its representatives.

9. The U.S. PRT Transaction market consists of approximately 15 insurers. Approximately two to four insurers typically compete for transactions that involve more than \$1 billion in liabilities, while four to six insurers usually engage in transactions between \$250 million and \$1 billion. Most PRT Transactions involve partial buy-outs of retirees’ long-term benefits.

#### **Athene’s PRT Transactions**

10. AAIA completed its first PRT transaction in June 2017, initially operating only from offices in Iowa, California, and Indiana. In October 2017, AAIA hired a New York resident to head its PRT business. Athene USA Corporation, an affiliate of AHL, subsequently decided to open a New York City office and that office opened on January 1, 2018. Between January 2018 and the end of January 2019, no more than five individual employees dedicated to the PRT business on a full-time basis operated from New York. By January 2019, approximately twenty-

five other employees supported the PRT business (in all but one instance, on a non-dedicated basis) from offices in Iowa and California.

11. From 2017 to January 2019, AAIA entered into 14 PRT Transactions, all of which included New York residents as plan participants. Two PRT Transactions involved plan sponsors with a New York-based headquarters: Company X and its subsidiary (collectively, “Company X”), and Company Y, which constituted the largest of all the transactions. In total, the 14 PRT Transactions involved 6,394 New York certificate holders. Of the 6,394 certificate holders, 1,927 certificate holders were part of the Company Y PRT Transaction, representing about 8% of account holders for that plan, and 1,434 certificate holders were part of the Company X PRT Transaction, representing 26% of Company X certificate holders. The remaining 3,033 New York certificate holders—less than half of the total number—were spread across the other 12 PRT Transactions and involved plan sponsors that were headquartered outside New York. As in the Company X and Company Y PRT Transactions, the other 12 PRT Transactions often involved New York-based consultants acting on behalf of plan sponsors.

12. In addition to the 14 PRT Transactions that AAIA completed, it bid on, but did not win, approximately 60 additional PRT Transactions. The Department subsequently determined that these bids collectively involved more than one thousand communications that were sent by AAIA representatives from within New York and/or sent to New York-based consultants of plan sponsors.

13. AAIA entered into the Company Y PRT Transaction in what AHL labeled a “first-of-its-kind” PRT Transaction, which was publicly announced in December 2018. Company Y’s press release noted that the transaction would be “the largest full plan termination to date that primarily includes terminated vested and active participants” and that AAIA was providing a

“first-of-its kind plan termination solution” where the annuity contract would cover all of the non-lump sum obligations of Company Y’s U.S. retirement plan. While Company Y’s headquarters is in New York, the GAC that was to be and was issued by AAIA was physically issued and delivered in New Jersey, where Company Y’s pension plan administrator and primary research and development location are located. Nevertheless, in the 18 months during which the Company Y PRT Transaction was negotiated, thousands of email communications relating to it were issued back and forth between AAIA and Company Y from or to AAIA’s New York office. These communications, some of which were with New York-based Company Y employees, included emails regarding the solicitation of and negotiations regarding the Company Y PRT Transaction. The emails also evidenced a large number of additional conversations, both in-person and by phone, between AAIA and Company Y or its consultants, which occurred in New York or involved individuals physically present in New York.

14. Prior to the Company Y PRT Transaction, AAIA engaged in similar activity with regard to Company X’s PRT Transaction. While the GAC for Company X’s PRT Transaction was issued and delivered in New Jersey, AAIA communicated with New York Company X employees or other representatives on hundreds of occasions regarding the transaction from New York or with individuals physically present in New York.

15. AAIA also engaged in thousands of communications regarding the other 12 PRT Transactions, all of which involved New York residents as plan participants and which were done from AAIA’s New York office or another New York location, or otherwise involved individuals physically present in New York.

16. In addition to communicating with New York-based representatives of various plan sponsors, AAIA also engaged in post-issuance servicing telephone calls with New York

residents and received a substantial number of web portal logins by New York residents. As of January 31, 2019, AAIA, through its third-party servicer, had received approximately two thousand telephone calls from New York certificate holders.

17. In the Company Y PRT Transaction, AAIA agreed to provide irrevocable commitments to all participants in the plan and to assume full financial responsibility, including all administration, for the annuity and lump sum payments. The contract was to cover all obligations of Company Y's U.S. retirement plan to plan participants who did not elect to receive a lump sum payment. After the payout of lump sum obligations in July 2019, it was expected that AAIA would cover approximately \$2.5 billion of remaining pension liabilities under the contract when completed in August 2019. This was a significant transaction for AAIA; at the time the contract was announced, AAIA had closed six PRT Transactions in 2018, representing approximately \$1.8 billion in pension liabilities.

18. On January 23, 2019, the Department sent AHL a letter alerting it to violations of the Insurance Law by AAIA. AHL and AAIA cooperated fully with the Department's inquiry.

19. On February 7, 2019, in a letter responding to the January 23, 2019 inquiry from the Department, AHL indicated that AAIA had confirmed some of the concerns raised by the Department and that certain business changes had been implemented.

20. The Department's Investigation revealed thousands of communications between AAIA and plan sponsors or their consultants from New York or to New York-based individuals, relating to the solicitation and negotiation of GACs, or to the servicing of New York certificateholders other than by mail, each of which constitutes a separate violation of the Insurance Law.

21. In September 2019, the Department issued Insurance Circular Letter No. 10 (2019) “to remind all life insurers and insurance producers doing business in New York that an unauthorized life insurer’s employees or other representatives may not solicit, negotiate, sell or service group annuity contracts, . . . through in-person meetings, telephone calls, mail, emails, access to web portals or in any other manner from an office or any other location in New York. In addition, an insurance producer and any other person, whether licensed by the Department . . . or otherwise, may not aid or call attention to an unauthorized insurer in New York.”

### **Violations**

22. By reason of the foregoing, the Department finds that AAIA violated Insurance Law § 1102(a).

### **AGREEMENT**

IT IS HEREBY UNDERSTOOD AND AGREED by Respondents that AHL and AAIA agree that:

### **Injunctive Relief**

23. For future PRT Transactions, AANY will issue the GAC and certificates with respect to New York participants, while AAIA will continue to issue the GAC and certificates with respect to all other participants. AANY has already issued the GAC and certificates with respect to New York participants in the Company Y PRT Transaction.

24. With regard to New York participants currently covered by the 13 other GACs and related certificates issued by AAIA, AANY will issue a separate GAC and certificates that comply with New York law to cover the New York participants. AANY will service all New York participants under the AANY certificates so that New York participants will receive the

same level of servicing provided by AAIA in connection with the original certificates issued by AAIA. To that end, AANY will contract with a third-party servicer to provide the servicing to New York participants.

25. As additional protection and to ensure AANY's ability to meet all PRT obligations, AAIA entered into a capital maintenance agreement approved by the Department pursuant to which AAIA agreed, subject to the terms of the agreement, to maintain AANY's total adjusted capital at a level at least equal to 300% of AANY's company action level risk-based capital.

26. Further, all external-facing PRT Transaction team members that may conduct business in New York will obtain a New York insurance agent's license. These team members will also be appointed as agents by AANY.

27. AAIA will implement the following operating guidelines for PRT Transactions: no employee or other representative of AAIA will solicit, negotiate, sell, or service PRT Transactions, GACs or related annuity certificates on behalf of AAIA, through in-person meetings, telephone calls, mail, emails, access to web portals, or in any other manner, from an office or any other location in New York. Further, no employee or other representative of AAIA will solicit, negotiate, sell, or service PRT Transactions, GACs, or related certificates on behalf of AAIA in New York from outside of New York, except by mail or email in accordance with the limited exception in Insurance Law § 1101(b)(2)(B).

28. Respondents shall comply with New York Insurance Law § 1101, as well as all other applicable New York laws and regulations.

### **Monetary Penalty**

29. No later than ten (10) business days after the Effective Date (as defined below) of this Consent Order, Respondents shall pay a civil monetary penalty of 45 million dollars (\$45,000,000) to the Department. The payment shall be made by wire transfer in accordance with the Department's instructions.

30. Respondents shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to payment made pursuant to any insurance policy referenced in this Consent Order, or from any of Respondents' parents, subsidiaries, or affiliates, with regard to any or all of the amounts payable pursuant to this Consent Order. However, nothing in this paragraph shall prevent Respondents from prosecuting malpractice claims against third parties.

31. Respondents shall 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.

### **Other Provisions**

32. Respondents submit to the authority of the Superintendent of Financial Services of the State of New York (the "Superintendent") to effectuate this Consent Order.

33. AAIA shall submit to the Department annual affidavits of compliance with the terms of this Consent Order for a period of six (6) years commencing from the Effective Date of this Consent Order.

34. If the Department believes Respondents to be in material breach of this Consent Order, the Department will provide written notice to Respondents and they must, within ten business days of receiving such notice, or on a later date if so determined in the Department's

sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is immaterial or has been cured.

35. Respondents' failure to make the required showing within the designated time period as set forth in Paragraph 34 of this Consent Order shall be presumptive evidence of Respondents' material breach. Upon a finding by the Department that any Respondent has breached this Consent Order, the Department has all the remedies available to it under all applicable laws and may use any evidence available to it in connection with any ensuing hearings, notices, orders, and other remedies that are available.

36. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by AHL and AAIA, either directly or through counsel, and the Department's own factual Investigation. To the extent that representations made by AHL or AAIA are later found to be materially incomplete or materially inaccurate, this Consent Order is voidable by the Superintendent in her sole discretion.

37. Upon the Department's request, Respondents shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.

38. AHL and AAIA represent and warrant, through the signatures below, that the terms and conditions of this Consent Order are duly approved, and the execution of this Consent Order is duly authorized.

39. All written communications to any party pursuant to this Consent Order shall be in writing and shall be directed as follows:

**For the Department:**

Lillian Grinnell  
Attorney for Enforcement  
New York State Department of Financial Services  
One State Street  
New York, New York 10004-1511

**For Respondents:**

7700 Mills Civic Parkway  
West Des Moines, IA 50266  
Attention: Blaine Doerrfeld, SVP and Corporate Secretary

and

2121 Rosencrans Avenue  
Suite 5300  
El Segundo, CA 90245  
Attention: Karen Braga, VP Legal

with a copy to:  
Sidley Austin LLP  
787 7th Ave  
New York, NY 10019  
Attention: Ellen M. Dunn

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. Respondents waive all rights to further notice and hearing in this matter as to any allegations of past violations by the Department's Consumer Protection and Financial Enforcement Division up to and including the Effective Date of this Consent Order and agree that no provision of this Consent Order is subject to review in any court or tribunal outside of the Department.

42. This Consent Order is binding on the parties, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

43. This Consent Order may not be altered, modified, or changed unless in writing signed by all the parties hereto.

44. The Consent Order shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or her designee.

45. This Consent Order constitutes the entire agreement between the Department and Respondents, and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

46. 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.

47. 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 provision of this Consent Order.

48. Upon the parties' execution of this Consent Order, the Department will discontinue the Investigation as to and against Respondents solely with respect to the practices set forth herein through the Effective Date of this Consent Order. No further action will be taken by the Department against Respondents for the conduct set forth in this Consent Order provided they comply with the terms of the Consent Order.

49. Nothing in this Consent Order shall be construed to prevent any consumer from pursuing any right or remedy at law.

50. Except with regard to the enforcement of this Consent Order, Respondents' consent to the provisions of this Consent Order does not bar, estop, waive, or otherwise prevent Respondents from raising any defenses to any action taken by any federal or state agency or department, or any private action against Respondents.

51. This 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 and the Consent Order is So Ordered by the Superintendent of Financial Services or her designee (the "Effective Date").

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

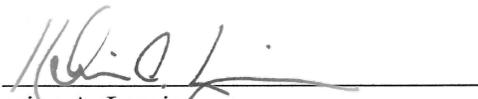
**NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES**

By:   
R. Bruce Wells  
Associate Counsel  
Consumer Protection & Financial  
Enforcement Division

April 11, 2020

By:   
Christopher B. Mulvihill  
Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

April 11, 2020

By:   
Katherine A. Lemire  
Executive Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

April   , 2020

**ATHENE ANNUITY AND LIFE  
COMPANY**

By:   
Grant Kvalheim  
President and CEO

April 11, 2020

**ATHENE HOLDING LTD.**

By:   
Adam Laing  
SVP, Finance

April 11, 2020

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

  
LINDA A. LACEWELL  
Superintendent of Financial Services

April 13, 2020