



NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
ONE STATE STREET  
NEW YORK, NEW YORK 10004

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In the Matter of :  
PACIFIC LIFE INSURANCE COMPANY :  
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**CONSENT ORDER**

The New York State Department of Financial Services (the “Department” or “DFS”) and Pacific Life Insurance Company (“PLIC” or the “Company”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, the Department commenced an investigation in May 2019 of PLIC, pursuant to the New York Insurance Law and Financial Services Law (the “Investigation”);

WHEREAS, the Investigation concluded that PLIC 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 PLIC PRT representatives had exchanged hundreds of e-mail communications and other contacts with businesses (including some located in New York) and communicated with New York individuals in violation of Insurance Law § 1102(a); and

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

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

## **THE DEPARTMENT'S FINDINGS**

### **Introduction**

1. PLIC is a life insurance company domiciled in Nebraska. PLIC is not licensed or otherwise authorized to do an insurance business in the State of New York.

2. Pacific Life & Annuity Company ("PL&A") is a life insurance affiliate of PLIC licensed to do an insurance business in the State of New York.

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. 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).

7. 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.”

#### Events at Issue

#### *Factual Background*

8. 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.

9. 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.

10. 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.

#### *PLIC’s PRT Transactions*

11. Although PLIC did not have a PRT team operating out of New York, PLIC made significant contacts with the State of New York relating to the solicitation and making of PRT contracts when PLIC entered into two large PRT transactions with a New York-based sponsor: Company X.

12. As part of its investigation into PLIC's PRT business in New York, the Department reviewed information related to both PRT Transactions between PLIC and Company X. In total, these transactions included 7,432 certificate holders, including 983 New York State residents, and an estimated transaction premium of \$425 million. The Department reviewed electronic communications to and from the PLIC PRT personnel primarily involved in the solicitation and negotiation of the transaction and found that a substantial percentage violated Insurance Law § 1102(a). Many of these communications also suggested additional communications between PRT representatives of PLIC and Company X.

13. The Department's Investigation revealed hundreds of communications between PLIC 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 certificate holders other than by mail, each of which constitutes a separate violation of the Insurance Law.

14. In the time between January 1, 2014, and August 17, 2020, PLIC bid on and won approximately seventy-five small (under \$500 million) PRT deals. In addition to the deals it won, from January 1, 2014, to August 17, 2020, PLIC bid on and lost three large (\$500 million to \$2 billion) deals. However, none of these deals involved a plan sponsor with a principal place of business (nexus) in the State of New York.

15. After discussing the Department's findings, PLIC: (i) transitioned the Company X transactions to a two-GAC structure using PL&A to cover New York Participants (as defined herein), (ii) launched a two-GAC structure with PLIC and PL&A for future PRT transactions, and (iii) began the process to migrate New York Participants to a PL&A annuity contract and continues to work with the Department in regard to these New York Participants.

Violations of Law and Regulations

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

NOW THEREFORE, to resolve this matter without further proceedings, the Department and the Company stipulate and agree to the following terms and conditions:

**SETTLEMENT PROVISIONS**

Monetary Penalty

17. No later than ten (10) days after the Effective Date (as defined below) of this Consent Order, the Company shall pay a total civil monetary penalty pursuant to New York Insurance Law § 1102(a) to the Department in the amount of three million Dollars and 00/100 Cents (\$3,000,000). The payment shall be in the form of a wire transfer in accordance with instructions provided by the Department.

18. The Company 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.

19. The Company shall neither seek nor accept, directly or indirectly, reimbursement or indemnification with respect to payment of the penalty amount, including but not limited to, payment made pursuant to any insurance policy.

Injunctive Relief

20. For future PRT Transactions, subsequent to the receipt of premium (the “Premium Receipt Date”), a New York-licensed life insurance company will issue a GAC and certificates with respect to the census of participants residing in the State of New York (“New York Participants”) provided to the issuing insurer on or about the Premium Receipt Date.

21. PLIC has presented a plan to the Department to use a New York-licensed insurer to provide retirement benefits for the New York Participants who are part of PRT transactions currently administered by PLIC. The Department supports the plan as presented, and the Department will solely determine whether PLIC is making satisfactory progress towards fully realizing this plan. Any New York Participant covered under a PLIC contract or certificate will be moved to a PL&A contract or certificate that will be approved by the Department, except as otherwise agreed to by the Department on a case-by-case basis.

22. Further, PRT Transaction employees who are selling or soliciting PRT GACs in New York will obtain a New York insurance agent's license. Such individuals will also be appointed as agents by PL&A.

23. PLIC will continue to provide guidance for PRT Transactions to assure no PLIC employees solicit, negotiate, or sell PRT Transactions, GACs, or related annuity certificates on behalf of PLIC, 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 or into New York.

24. The Company shall comply with New York Insurance Law § 1101, as well as all other applicable New York laws and regulations, with respect to the subject matter herein.

25. The Company shall submit to the Department annual affidavits of compliance with the terms of this Consent Order for a period of three (3) years commencing from the Effective Date of this Consent Order.

#### Full and Complete Cooperation

26. The Company commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

#### Further Action by the Department

27. Upon the parties' execution of this Consent Order, the Department will discontinue the Investigation as to and against the Company 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 the Company for the conduct set forth in this Consent Order provided the Company complies with the terms of the Consent Order.

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

#### Waiver of Rights

29. The Company submits to the authority of the Superintendent to effectuate this Consent Order.

30. The parties understand and agree that no provision of this Consent Order is subject to review in any court, tribunal, or agency outside of the Department.

#### Parties Bound by the Consent Order

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

#### Breach of Consent Order

32. In the event that the Department believes the Company to be in material breach of the Consent Order, the Department will provide written notice to the Company, and the



Company must, within ten (10) 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 not material or has been cured.

33. The Company understands and agrees that its failure to make the required showing within the designated time period shall be presumptive evidence of the Company's breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the remedies available to it under the New York Insurance Law and Financial Services Law, and any other applicable laws, and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

#### Notices

34. All notices or communications regarding this Consent Order shall be sent to:

#### For the Department:

Laura E. Meehan  
Senior Assistant Deputy Superintendent  
Consumer Protection and Financial Enforcement  
New York State Department of Financial Services  
One State Street  
New York, New York 10004-1511

#### For Pacific Life Insurance Company

Jay Orlandi  
Executive Vice President & General Counsel  
700 Newport Center Drive  
Newport Beach, CA 92660

#### Miscellaneous

35. 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.

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

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

38. Each provision of this Consent Order shall remain effective and enforceable against the Company, its successors, and assigns, until stayed, modified, suspended, or terminated by the Department.

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

40. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of this Consent Order.

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

42. 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 (the "Effective Date").

*[remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed on the dates set forth below.

**NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES**

**PACIFIC LIFE INSURANCE  
COMPANY**

By: /s  
Tatsiana Zhuk  
Special Assistant to the Executive Deputy  
Superintendent for  
Consumer Protection and Financial  
Enforcement Division

December 16, 2021

By: /s  
Jay Orlandi  
Executive Vice President &  
General Counsel

December 15, 2021

By: /s  
Christopher B. Mulvihill  
Deputy Superintendent  
Consumer Protection and Financial  
Enforcement Division

December 16, 2021

By: \_\_\_\_\_  
KATHERINE A. LEMIRE  
Executive Deputy Superintendent for  
Consumer Protection and Financial  
Enforcement

December \_\_, 2021

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

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ADRIENNE A. HARRIS  
Acting Superintendent of Financial Services

December \_\_, 2021