



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

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In the Matter of :  
BANNER LIFE INSURANCE COMPANY :

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**CONSENT ORDER**

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

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

WHEREAS, the Investigation concluded that Banner Life had conducted 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 certain Banner Life PRT representatives, some of whom were located in New York during certain hours and days of the week, had

exchanged hundreds of email 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. Banner Life is a life insurance company domiciled in Maryland. Banner Life is not licensed or otherwise authorized to do an insurance business in the State of New York.

Banner Life is a wholly owned subsidiary of Legal & General America, Inc. ("LGA").

2. 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.

3. 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.

4. 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.

5. 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).

6. 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*

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. Most PRT Transactions involve partial buy-outs of retirees’ long-term benefits.

### *Banner Life’s PRT Transactions*

10. Although the Company did not have an office located in New York, Banner Life’s contacts with the State of New York relating to the solicitation and making of PRT contracts occurred when certain of its client-facing PRT employees were operating in New York.

11. As part of its investigation into Banner Life's PRT business in New York, the Department reviewed information related to a sample of six of Banner Life's PRT Transactions. In total, these transactions included 28,503 certificate holders, including 1,506 New York State residents, and an estimated transaction premium ranging from approximately \$28 million to approximately \$790 million. The Department reviewed electronic communications to and from Banner Life's PRT personnel primarily involved in the solicitation and negotiation of the transactions and found hundreds that violated Insurance Law § 1102(a). Many of these communications also suggested additional communications between PRT representatives of Banner Life and the plan sponsors.

12. The Department's Investigation revealed hundreds of communications between the Company 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.

13. The sample transactions reviewed by the Department were representative of Banner Life's PRT deals in their complexity and contacts with New York. In total, in the time between January 1, 2016, and November 1, 2019, LGRA bid on 188 PRT transactions, resulting in 49 transactions won by Banner Life. Banner Life also bid on and lost 6 transactions with a New York-based plan sponsor.

14. In July 2019, LGA contacted the Department to advise the Department proactively about the PRT activities of its subsidiary, Banner Life. LGA described the nature and extent of Banner Life's PRT business and committed to cooperate fully in the Department's investigation of that business. In addition, LGA representatives discussed with the Department

operational plans to migrate New York Participants (as defined herein) from Banner Life to William Penn Life Insurance Company of New York (“William Penn”), a life insurance subsidiary of LGA licensed to do an insurance business in the State of New York.

15. Following the Department’s approval, on November 1, 2019, Banner Life (i) launched a two-GAC structure with William Penn and Banner Life for future PRT transactions and (ii) began the process to migrate New York Participants (as defined herein) to a William Penn annuity contract.

#### Violations of Law and Regulations

16. By reason of the foregoing, the Department finds that Banner Life 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 Five Hundred Thousand United States Dollars (\$3,500,000.00). 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 the 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. Banner Life 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 administered by Banner Life. The Department supports the plan as presented, and the Department will solely determine whether Banner Life has made satisfactory progress towards fully realizing this plan. Any New York Participant covered under a Banner Life contract or certificate will be moved to a William Penn 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 of William Penn.

23. Banner Life will continue to provide guidance for PRT Transactions to ensure that no Banner Life employees solicit, negotiate, or sell PRT Transactions, GACs, or related annuity certificates on behalf of Banner Life, 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 Banner Life, either directly or through counsel, and the Department's own factual Investigation. To the extent that representations made by Banner Life 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:

Ariana F. Reinhertz  
Attorney, Excelsior Fellow  
Consumer Protection and Financial Enforcement  
New York State Department of Financial Services  
One State Street  
New York, New York 10004-1511

For Banner Life Insurance Company:

Justin Kitchens  
VP & Head of Legal, US Retirement  
Banner Life Insurance Company  
c/o Legal & General Retirement America  
750 Washington Blvd., Suite 900  
Stamford, Connecticut 06901

George L. Palms, Jr.,  
President, US Retirement  
Banner Life Insurance Company  
c/o Legal & General Retirement America  
750 Washington Blvd, Suite 900  
Stamford, Connecticut 06901

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**

**BANNER LIFE INSURANCE  
COMPANY**

By: /s/ Laura E. Meehan  
LAURA E. MEEHAN  
Senior Assistant Deputy Superintendent  
Consumer Protection and Financial  
Enforcement

By: /s/ George L. Palms, Jr.  
GEORGE L. PALMS, JR.  
President, U.S. Retirement

July 22, 2022

July 25, 2022

By: /s/ Christopher B. Mulvihill  
CHRISTOPHER B. MULVIHILL  
Deputy Superintendent for Consumer  
Protection and Financial Enforcement

July 25, 2022

By: /s/ Kevin R. Puvalowski  
KEVIN R. PUVALOWSKI  
Acting Executive Deputy Superintendent for  
Consumer Protection and Financial  
Enforcement

July 25, 2022

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

/s/ Adrienne A. Harris  
ADRIENNE A. HARRIS  
Superintendent of Financial Services

July 27, 2022