

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
11 NYCRR 224  
(INSURANCE REGULATION 187)**

**SUITABILITY IN ANNUITY TRANSACTIONS**

I, Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York, pursuant to the authority granted by sections 202 and 302 of the Financial Services Law and sections 301, 308, 309, 2110, 2123, 2208, 3209, 4226, 4525, and article 24 of the Insurance Law, do hereby promulgate a new Part 224 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 187), to take effect upon publication in the State Register, to read as follows:

**(ALL MATERIAL NEW)**

A new Part 224 is added to read as follows:

**Section 224.0 Purpose.**

The purpose of this Part is to require insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. These standards and procedures are substantially similar to the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation ("NAIC Model") for annuities, and the Financial Industry Regulatory Authority's current National Association of Securities Dealers ("NASD") Rule 2310 for securities. To date, more than 30 states have implemented the NAIC Model, while NASD Rule 2310 has applied nationwide for nearly 20 years. Accordingly, this Part intends to bring these national standards for annuity contract sales to New York.

**Section 224.1 Applicability.**

This Part shall apply to any recommendation to purchase or replace an annuity contract made to a consumer by an insurance producer or an insurer, where no insurance producer is involved, that results in the purchase or replacement recommended.

**Section 224.2 Exemptions.**

Unless otherwise specifically included, this Part shall not apply to transactions involving:

- (a) a direct response solicitation where there is no recommendation made; or
- (b) a contract used to fund:

(1) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) a plan described by Internal Revenue Code sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(3) a government or church plan defined in Internal Revenue Code section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Internal Revenue Code section 457;

(4) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; or

(5) a settlement or assumption of liabilities associated with personal injury litigation or any dispute or claim resolution process.

### **Section 224.3 Definitions.**

For the purposes of this Part:

(a) *Consumer* means the prospective purchaser of an annuity contract.

(b) *Insurer* means a life insurance company defined in Insurance Law section 107(a)(28), or a fraternal benefit society as defined in Insurance Law section 4501(a).

(c) *Recommendation* means advice provided by an insurance producer, or an insurer where no insurance producer is involved, to a consumer that results in a purchase or replacement of an annuity contract in accordance with that advice.

(d) *Replace* or *Replacement* means a transaction subject to Part 51 of this Title (Insurance Regulation 60) and involving an annuity contract.

(e) *Suitability information* means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) age;

(2) annual income;

(3) financial situation and needs, including the financial resources used for the funding of the annuity;

(4) financial experience;

(5) financial objectives;

(6) intended use of the annuity;

(7) financial time horizon;

- (8) existing assets, including investment and life insurance holdings;
- (9) liquidity needs;
- (10) liquid net worth;
- (11) risk tolerance; and
- (12) tax status.

#### **Section 224.4 Duties of Insurers and Insurance Producers.**

(a) In recommending to a consumer the purchase or replacement of an annuity contract, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance policies or contracts and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(1) the consumer has been reasonably informed of various features of the annuity contract, such as the potential surrender period and surrender charge, availability of cash value, potential tax implications if the consumer sells, surrenders or annuitizes the annuity contract, death benefit, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, guaranteed interest rates, insurance and investment components, and market risk;

(2) the consumer would benefit from certain features of the annuity contract, such as tax-deferred growth, annuitization or death or living benefit;

(3) the particular annuity contract as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or replacement of the annuity contract, and riders and similar product enhancements, if any, are suitable (and in the case of a replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

(4) in the case of a replacement of an annuity contract, the replacement is suitable including taking into consideration whether:

(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), be subject to tax implications if the consumer surrenders or borrows from the annuity contract, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(ii) the consumer would benefit from annuity contract enhancements and improvements; and

(iii) the consumer has had another annuity replacement, in particular, a replacement within the preceding 36 months.

(b) Prior to the recommendation of a purchase or replacement of an annuity contract, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(c) Except as provided under subdivision (d) of this section, an insurer shall not issue an annuity contract recommended to a consumer unless there is a reasonable basis to believe the annuity contract is suitable based on the consumer's suitability information.

(d)(1) Except as provided under paragraph (2) of this subdivision, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subdivision (a) or (c) of this section related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate material information provided by the consumer;

(iii) a consumer refuses to provide relevant suitability information and the annuity purchase or replacement is not recommended; or

(iv) a consumer decides to enter into an annuity purchase or replacement that is not based on a recommendation of the insurer or the insurance producer.

(2) An insurer's issuance of an annuity contract subject to paragraph (1) of this subdivision shall be reasonable under all the circumstances actually known to the insurer at the time the annuity contract is issued.

(e) An insurance producer or an insurer, where no insurance producer is involved, shall at the time of purchase or replacement:

(1) document any recommendation subject to subdivision (a) of this section;

(2) document the consumer's refusal to provide suitability information, if any; and

(3) document that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation.

(f) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and insurance producers' compliance with this Part. An insurer may contract with a third party to establish and maintain a system of supervision with respect to insurance producers.

(g) An insurer shall be responsible for ensuring that every insurance producer recommending the insurer's annuity contracts is adequately trained to make the recommendation.

(h) No insurance producer shall make a recommendation to a consumer to purchase an annuity contract about which the insurance producer has inadequate knowledge.

- (i) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:
- (1) truthfully responding to an insurer's request for confirmation of suitability information;
  - (2) filing a complaint with the superintendent; or
  - (3) cooperating with the investigation of a complaint.

**Section 224.5 Insurer Responsibility.**

The insurer shall take appropriate corrective action for any consumer harmed by a violation of this Part by the insurer, the insurance producer, or any third party that the insurer contracts with pursuant to subdivision (f) of section 224.4 of this Part. In determining any penalty or other disciplinary action against the insurer, the superintendent may consider as mitigation any appropriate corrective action taken by the insurer, or whether the violation was part of a pattern or practice on the part of the insurer.

**Section 224.6 Recordkeeping.**

All records required or maintained under this Part, whether by an insurance producer, an insurer, or other person shall be maintained in accordance with Part 243 of this Title (Insurance Regulation 152).

**Section 224.7 Violations.**

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law, except where such act or practice shall be a defined violation, as defined in section 2402(b) of the Insurance Law, and in either such case shall be a violation of section 2403 of the Insurance Law.



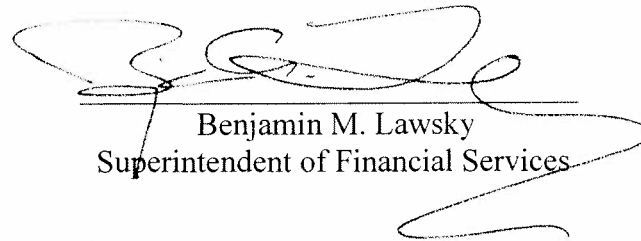
NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the new Part 224 of Title 11 (Insurance Regulation 187), signed by me on July 26, 2013, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 308, 309, 2110, 2123, 2208, 3209, 4226, 4525, and Article 24 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on March 20, 2013. No other publication or prior notice is required by statute.



Benjamin M. Lawsky  
Superintendent of Financial Services

Date: July 26, 2013