

Summary of First Amendment to 11 NYCRR 224 (Insurance Regulation 187).

The words “best interests” and “life insurance” were added to the title of the regulation consistent with the amendments made to the text of the regulation and standards already established by the Insurance Law.

Section 224.0 is revised to expand the purpose of the regulation to apply to life insurance and explain that the sections of the Insurance Law that establish standards of conduct for insurers and producers require any recommended transaction to be in the best interest of the consumer and to appropriately address the insurance needs and financial objectives of the consumer at the time of the transaction.

Section 224.1 is amended to apply the standards set forth in the regulation to life insurance transactions.

Section 224.2 is revised to replace the term “contract” with the term “policy” for consistency with the amendment, and to clarify and/or expand the exemptions.

Section 224.3 adds new definitions and revises current definitions consistent with the broadening of the regulation, which now includes life insurance and transactions other than a purchase or replacement, such as modifications and elections of contractual provisions. The amendment to this section adds to the definition of “suitability information” for consistency purposes and adds a definition for the term “suitable.” The amendment to this section also adds definitions of “insurance producer, “policy”, “transaction”, “sales transaction” and “in-force transaction.”

Section 224.4 is amended so that the duties of insurers and producers, in addition to applying to annuity recommendations, also now apply to life insurance recommendations. Section 224.4 is amended to clarify that a producer, or an insurer where no producer is involved, shall act in the best interest of the consumer. The section is also amended to explain that the producer, or the insurer where no producer is involved, acts in the best interest of the consumer when the recommendation is based on the consumer’s suitability information and reflects the care that a prudent person in a like capacity would exercise in a similar situation., when the transaction is suitable, and when the consumer has been reasonably informed of the consequences of the transaction. The section also

clarifies that only the interests of the consumer shall be considered in making the recommendation and the receipt of compensation or other incentives is permitted provided its receipt does not influence the specific recommendation. Section 224.4 is also amended to add new subsections that: require a producer, or an insurer where no producer is involved, to disclose to the consumer the information used to provide the recommendation and document any refusal to provide suitability information or any decision to enter into a sales transaction that is not based on the producer's recommendation; prohibit a producer from making a recommendation unless the producer has a reasonable basis to believe that the consumer can meet the financial obligations under the policy; and prohibit a producer from stating that a recommendation is part of the financial or investment planning unless the producer has an appropriate professional designation. Section 224.4 is further amended to state that any requirement applicable to a producer under the regulation applies to every producer in the transaction who has participated in the making of the recommendation and received compensation as a result of the sales transaction, regardless of the level of contact made with the consumer. Section 224.4 is amended to state that nothing in the regulation shall be construed to prohibit or limit compensation of a producer that is otherwise permitted under the Insurance Law and regulations. This section is also amended to clarify that a producer may limit the range of policies recommended to consumers based on a captive or affiliation agreement with a particular insurer as long as required disclosures are provided.

A new section 224.5 is added to address duties of insurers and producers with respect to in-force transactions and to establish a best interest standard of care. The new section explains that the producer, or the insurer where no producer is involved, acts in the best interest of the consumer when the recommendation is based on the consumer's suitability information and reflects the care that a prudent person in a like capacity would exercise in a similar situation, when the transaction is suitable, and when the consumer has been reasonably informed of the consequences of the transaction. The section also clarifies that only the interests of the consumer shall be considered in making the recommendation and the receipt of compensation or other incentives is

permissible provided its receipt does not influence the specific recommendation. The section prohibits a producer from stating that a recommendation is part of the financial or investment planning unless the producer has an appropriate professional designation, and also states that any requirement applicable to a producer under the regulation applies to every producer in the transaction who has participated in the making of the recommendation. Lastly, this new section 224.5 prohibits a producer from making a recommendation to a consumer to enter into an in-force transaction about which the producer has inadequate knowledge.

Section 224.5 is renumbered to section 224.6 and adds new subdivisions requiring an insurer to: not effectuate a sales transaction unless the transaction is suitable based on the consumer's suitability information; establish, maintain, and audit a system of supervision that is designed to achieve compliance with this Part; ensure that producers are adequately trained with respect to the insurer's policies to make recommendations; establish and maintain procedures to prevent financial exploitation and abuse; provide any policy information reasonably requested by the consumer regarding the consumer's in-force policy; provide comparison information showing differences between fee-based and commission-based versions of a product; and provide relevant policy information and information required by Regulation 60 to a producer for evaluating a replacement transaction.

Section 224.6 is renumbered to section 224.7 and deletes the word "insurance" that precedes the word "producer" to be consistent with the definition of "producer" in section 224.3(c).

Section 224.7 is renumbered to section 224.8 and changes the placement of the words "Insurance Law" consistent with other recent regulatory revisions.

Section 224.9 is added to address the effective date.