



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

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In the Matter of : Case No. 2020-0003-C  
THE NATIONAL RIFLE ASSOCIATION OF AMERICA :  
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**CONSENT ORDER**

**WHEREAS**, the New York State Department of Financial Services (the “Department”) commenced an investigation in October 2017 regarding certain insurance products marketed to members of the National Rifle Association of America (the “NRA” or “Respondent”) pursuant to the New York Insurance Law (“New York Insurance Law”) and Financial Services Law (the “Department’s Investigation”);

**WHEREAS**, the Department investigated whether the NRA was acting as an insurance broker in the State of New York without a New York license, aiding or abetting unauthorized insurers in soliciting insurance in the State of New York, calling attention to unauthorized insurers in advertisements, or engaging in deceptive or unfair practices;

**WHEREAS**, on February 4, 2020, the Department filed a Statement of Charges and Notice of Hearing, seeking to impose civil monetary penalties and injunctive relief with respect to the NRA’s alleged violations of law and an order determining that the NRA engaged in unfair or deceptive acts or practices; and

**WHEREAS**, the Department and Respondent are willing to resolve all matters described herein without further proceeding;

**NOW THEREFORE**, to resolve this matter without further proceedings, the Department finds as follows:

**THE DEPARTMENT'S FINDINGS FOLLOWING INVESTIGATION**

**A. Legal Background**

**Licensing Requirement for Insurance Producers**

1. New York Insurance Law prohibits any corporation from acting as an insurance broker, by receiving any compensation for soliciting any insurance on behalf of any licensed insurance broker, without a license issued by the Department. *See* New York Insurance Law §§ 2101(c), 2101(k), 2102(a)(1)(A). New York Insurance Law § 2101(o) defines solicitation to mean “attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular licensed insurer, fraternal benefit society or health maintenance organization.”

2. In addition to the general requirement that an insurance broker be licensed, Section 2102(e)(1) of the New York Insurance Law prohibits any person who is required to be licensed by the Department and is not so licensed from accepting any commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in the State of New York.

**Excess Line Insurance Provisions**

3. Generally, insurers are licensed by the Department to provide specific types of insurance to New York consumers. In situations in which insurance cannot be obtained through an authorized insurer, however, insurance can be obtained through an “excess line” insurer.

Excess line insurers are not licensed by the Department and so are considered unauthorized insurers in the State of New York. Excess line insurers are permitted to do business in the State of New York, however, through an excess line broker for certain types of insurance coverage specified in New York Law and Regulations and under prescribed rules. Unless those rules are satisfied, provision of insurance by an excess line insurer is not permitted by New York Insurance Law.

4. The solicitation of insurance in the State of New York by an unauthorized insurer, other than by mail from outside the State of New York, constitutes a violation of New York Insurance Law by the insurer, and acting for or aiding the unauthorized insurer by soliciting such insurance in the State of New York constitutes a violation of New York Insurance Law § 2117(a).

5. Additionally, New York Insurance Law § 2122(a)(2) provides that no insurance producer or other person, shall, by any advertisement or public announcement in the State of New York, call attention to any unauthorized insurer or insurers.

*Prohibitions on Types of Coverage Offered*

6. Under New York law, except in circumstances not relevant here, insurance cannot be written to cover intentional acts or criminal defense costs. *See* New York Insurance Law §§ 1101(a) and 1116(a)(3) and 11 NYCRR Part 262.

**B. Factual Findings**

*Background*

7. The NRA is a New York not-for-profit corporation whose mission is “firearms safety, education, and training and advocacy on behalf of safe and responsible gun owners.” The NRA is not and has never been licensed as an insurance producer by the Department.

8. Since at least 2000, the NRA has entered into agreements with insurance brokers and participated in offering with those brokers a variety of insurance products to NRA members (including their families and NRA-affiliated businesses) as part of an affinity-insurance program (the “Affinity Program”). Under this program, NRA members were offered property, liability, health, and life insurance. At various times, certain marketing materials represented that the insurance was researched, negotiated, and endorsed by the NRA.

9. Specifically, under the agreements, the Lockton Affinity Series of Lockton Affinity, LLC (“Lockton Affinity”) acted as the broker for property and casualty products, and A.G.I.A., Inc. (“A.G.I.A.”) acted as the broker for life and health products.

10. Lockton Affinity has been licensed by the Department to act as an insurance producer, including as an excess line broker, since at least 2013.

11. A.G.I.A. has been licensed by the Department since approximately 2009.

12. As described below, through the Affinity Program, insurance policies were issued or delivered to persons or entities known to the NRA to be New York residents (hereinafter, “New York Insurance Policies”).

*The Carry Guard Program*

13. In 2016, the NRA and Lockton Affinity, a licensed broker, created an insurance product that became known as “Carry Guard.” This insurance, together with concealed-carry training, education, and other non-insurance amenities, constituted the “Carry Guard membership program.” The Carry Guard membership program, including Carry Guard insurance, was marketed and sold throughout the United States, including in the State of New York.



14. From approximately April 1, 2017, to November 17, 2017, then an NRA website, [www.nracarryguard.com](http://www.nracarryguard.com), described Carry Guard insurance as providing “a cutting-edge set of features that will help gun owners mitigate the potentially costly financial and legal consequences flowing from armed encounters.” The website described the program as “the only membership carry program developed and supported by the National Rifle Association.” The website further stated that Carry Guard was “created and endorsed by the NRA.”

15. The NRA did not possess an insurance producer license from the Department. Notwithstanding that, the NRA: (a) caused its marketing vendor, Ackerman McQueen, to create and place television commercials on cable television and to broadcast NRA-produced videos promoting the Carry Guard membership program on YouTube; (b) the NRA directly solicited participation in the Carry Guard membership program through mass email marketing deployed by the NRA itself, direct mail, banner ads, and articles in NRA publications; and (c) in NRA-deployed promotional emails, Wayne LaPierre, the NRA’s Chief Executive and Executive Vice President, advised consumers of Carry Guard’s specific terms and conditions.

16. The NRA maintains that at all times it relied on Lockton Affinity, a licensed broker, to review and approve Carry Guard promotional materials and ensure the program’s coverage and marketing were lawful.

17. The terms and conditions of the insurance included up to \$1 million of insurance protection against civil lawsuits; immediate access to supplemental funds for bail, attorney retainer fees and other criminal defense costs; up to \$150,000 in criminal liability reimbursement upon an acquittal; and automatic protection for a spouse at no extra cost.

18. The written agreement between the NRA and Lockton Affinity with respect to Carry Guard provided that the NRA was to receive compensation that included, among other

things, a royalty amount of 21.92% of the premium paid by NRA members who purchased Carry Guard insurance, along with certain profit-sharing revenues. Although the sale of the Carry Guard insurance product was discontinued in the State of New York after only a few months due to the Department's Investigation, approximately 680 Carry Guard insurance policies were issued to New York residents, and the NRA received royalties on those sales.

19. Carry Guard insurance policies were placed through New York's excess line market with Illinois Union Insurance Company, which served as the underwriter for Carry Guard. Illinois Union Insurance Company is a subsidiary of Chubb Ltd. and held itself out to the public simply as "Chubb." Illinois Union Insurance Company is an unauthorized insurer in the State of New York that is eligible, under certain circumstances, to write excess line insurance in the State.

20. The Carry Guard program, however, provided insurance coverage that DFS finds may not legally be offered in the New York excess line market, specifically: (a) defense coverage in a criminal proceeding that is not permitted by law; (b) liability coverage for bodily injury or property damage expected or intended, from the insured's standpoint, in an insurance policy limited to use of firearms and that was beyond the use of reasonable force to protect persons or property; and (c) coverage for expenses incurred by the insured for psychological counseling support.

21. In addition, the Carry Guard marketing materials specifically called attention to Chubb, an unauthorized insurer, in violation of the New York Insurance Law. According to the marketing and promotion website for the Carry Guard Program, [www.nracarryguard.com](http://www.nracarryguard.com), for example, Carry Guard was "backed by insurance leader Chubb" and was underwritten by a

group within Chubb, “the world’s largest publicly traded property and casualty insurance company.”

*The Other NRA Programs*

22. Although it did not possess an insurance producer license from the Department, from 2000 to 2019, the NRA posted and disseminated electronic communications, authored by its insurance brokers, that marketed and solicited numerous additional insurance products (the “Other NRA Programs”) that were purchased by insureds in the State of New York. For example, the NRA deployed bulk emails, ran banner ads on its websites, printed articles in NRA publications, and allowed its brokers to use its name and trademark in connection with several NRA-affiliated websites such as [www.nraendorsedinsurance.com](http://www.nraendorsedinsurance.com), [www.mynrainurance.com](http://www.mynrainurance.com), and [www.nraapprovedservices.com](http://www.nraapprovedservices.com). The NRA also referred visitors from its main website, [www.nra.org](http://www.nra.org), and its benefits page, [www.benefits.nra.org](http://www.benefits.nra.org), to websites administered by third-party insurance brokers to purchase insurance. The language used in the bulk emails deployed by the NRA and websites hosted and linked-to by the NRA encouraged NRA members to purchase insurance via the Affinity Program and discussed the terms and conditions of the coverage being offered.

23. The NRA maintains that as a general matter it relied on its licensed insurance brokers to develop the foregoing solicitation materials and language and ensure compliance with applicable laws.

24. With respect to the Other NRA Programs, from in or about 2000 through 2018, approximately 28,015 New York Insurance Policies (including renewals of already-existing policies) were procured through Lockton Affinity. From in or about 2000 through 2019, an

undetermined number of additional New York Insurance Policies were procured through A.G.I.A.

25. The NRA was compensated for its participation in the Other NRA Programs through royalties that were impermissibly based on a percentage of the insurance premiums paid by NRA members on policies sold. Those royalty percentages varied by program, but most ranged between 13.67% to 21.92% of the premium amounts paid by NRA members. With respect to the New York Insurance Policies, the NRA received more than \$1.8 million in royalties and administrative fees between 2000 and 2019 from the property and casualty portion of the Affinity Program. The NRA also received additional royalties from the health and life portion of the Affinity Program, as well as profit-sharing distributions from the Affinity Program.

**C. Violations of Laws**

26. By reason of the foregoing, the Department finds that the NRA violated New York Insurance Law § 2102(a)(1)(A); New York Insurance Law § 2102(e)(1); New York Insurance Law § 2117(a); and New York Insurance Law § 2122(a)(2).

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



## **SETTLEMENT PROVISIONS**

### **A. Monetary Penalty**

27. No later than thirty (30) business days after the Effective Date (as defined below) of this Consent Order, Respondent shall pay to the Department a civil monetary penalty of two million five hundred thousand U.S. dollars (\$2,500,000.00). The payment shall be made by wire transfer in accordance with the Department's instructions.

28. Respondent 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.

### **B. Other Relief**

29. For a period of five years beginning on the Effective Date of this Consent Order, the NRA shall not participate in any manner in connection with the offering of insurance in the State of New York, including (a) acting or aiding in any manner, including in using or permitting the use of its name or logo, in marketing, soliciting, or participating in any activity involving newly placed New York Insurance Policies, or (b) receiving any compensation whatsoever in respect of newly placed or renewed New York Insurance Policies.

30. At all times, the NRA shall act in compliance with the New York Insurance Law and regulations promulgated thereunder, including but not limited to any licensure requirements of the New York Insurance Law or regulations promulgated thereunder. Accordingly, the NRA agrees that, to the extent that the NRA wishes to participate in any activity involving the marketing or solicitation of New York Insurance Policies and receive compensation from any insurer or insurance producer arising from premiums paid on such New York Insurance Policies

(following the expiration of the five-year bar identified in paragraph 29 above), it must first apply for and obtain an insurance producer license from the Department.

31. To the extent that the NRA participates in the offering of insurance in the State of New York following the five-year bar described in paragraph 29 and after obtaining a license as described in paragraph 30, and to the extent that the NRA thereafter is compensated for such participation, the NRA, in the State of New York: (a) shall not represent that the NRA has negotiated insurance coverage at the lowest possible cost to its members or words to that effect; and (b) shall prominently disclose in any solicitation or marketing that it is being compensated in connection with any policies issued.

32. For the avoidance of doubt, nothing in this Consent Order shall prohibit the NRA from procuring insurance for the NRA's own corporate operations.

C. Other Provisions

33. If the Department believes Respondent to be in material breach of this Consent Order, the Department will provide written notice to Respondent and Respondent 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.

34. Respondent's failure to make the required showing within the designated time period as set forth in paragraph 33 of this Consent Order shall be presumptive evidence of Respondent's material breach. Upon a finding by the Department that Respondent has breached this Consent Order, the Department shall have 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.

35. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by the NRA, either directly or through counsel, and the Department's Investigation. To the extent that the NRA is found to have made representations during the course of the Department's Investigation that were materially inaccurate, this Consent Order shall be voidable by the Superintendent of Financial Services of the State of New York (the "Superintendent") in her sole discretion.

36. 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 the Consent Order.

37. No further action will be taken by the Department against the NRA for the conduct set forth in this Consent Order, provided that the NRA does not materially violate the terms of the Consent Order.

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

39. Respondent submits to the authority of the Superintendent with respect to the enforcement of the terms of this Consent Order.

40. The NRA shall take no action or make any statement that denies, directly or indirectly, the propriety of this Consent Order or that expresses the view that this Consent Order is without factual basis. Notwithstanding the foregoing, the parties expressly agree that nothing in this Consent Order shall be construed to bar, estop, waive, or prejudice the claims or defenses that have been asserted or may be asserted by any party in the litigation captioned *National Rifle Association of America v. Cuomo et al.*, 1:18-cv-00566-TJM-CFH (N.D.N.Y.) ("*NRA v.*

*Cuomo*"). For the avoidance of doubt, no Factual Finding or Violation of Law set forth in this Consent Order shall be accorded issue-preclusive or claim-preclusive effect in *NRA v. Cuomo*.

41. Respondent represents and warrants, through the signature below, that the terms and conditions of this Consent Order are duly approved, and the execution of this Consent Order is duly authorized.

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

**For the Department:**

Alison Passer  
Senior Assistant Deputy Superintendent  
New York State Department of Financial Services  
One State Street  
New York, New York 10004-1511

**For Respondent:**

John C. Frazer  
Secretary and General Counsel  
National Rifle Association of America  
11250 Waples Mill Road  
Fairfax, VA 22030

with a copy to:

Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Attention: Sarah B. Rogers

43. 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.

44. Respondent waives all rights to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date of this Consent Order and



agrees that no provision of this Consent Order is subject to review in any court or tribunal outside of the Department.

45. 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.

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

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

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

49. 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.

50. 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.

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").

*(The remainder of this page is intentionally left blank.)*

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 13<sup>th</sup> day of ~~October~~, 2020.  
November

**NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES**

**THE NATIONAL RIFLE ASSOCIATION  
OF AMERICA**

By: Serwat Farooq  
Serwat Farooq  
Senior Assistant Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

By: John C. Frazier  
Name: John C. Frazier  
Title: Secretary & General Counsel

By: Hadas A. Jacobi  
Hadas A. Jacobi  
Senior Assistant Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

By: Kevin R. Puvalowski  
Kevin R. Puvalowski  
Senior Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

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

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

Linda A. Lacewell

LINDA A. LACEWELL  
Superintendent of Financial Services