

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)
ALLIANZ LIFE INSURANCE)
COMPANY OF NORTH AMERICA)
NAIC # 90611)

Docket No.: 75317

CONSENT AGREEMENT AND FINAL ORDER
(Pursuant to K.S.A. 40-222 and K.S.A. 77-537)

The Kansas Insurance Department (“KID”) and Allianz Life Insurance Company of North America (“Allianz” or “Company”) submit this Consent Agreement and Final Order. Allianz hereby waives any and all rights to further administrative adjudication or review of this matter, including any and all rights conferred upon it under K.S.A. 77-501 *et seq.* Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-222, Vicki Schmidt, the duly elected, qualified and serving Commissioner of Insurance, hereby adopts the KID’s agreement made with Allianz and finds and Orders as follows:

Findings of Fact

The parties stipulate that if a hearing were conducted in this matter, the following evidence could be offered by the Commissioner, and although neither admitted nor denied by Respondent, would be recognized as admissible to show the following:

1. Allianz is domiciled in Minnesota and has been authorized in Kansas since 1981.
2. KID completed a targeted market conduct examination of Allianz. The examination period was from January 1, 2014 through December 31, 2016.
3. The examination was driven by an increase in consumer complaints, particularly for fixed, indexed annuities. The examination focused on company oversight, as well as marketing and sales, including suitability review and replacement procedures.
4. KID examined both issued and declined or cancelled annuity applications as well as some data samples within that set.

5. Allianz primarily distributes fixed, indexed annuities through third party Field Marketing Offices and broker-dealer channels.
6. KID examined a sample of 108 producer client files to review compliance with suitability and replacement requirements.
 - a. Within this sample, 21 producer client files did not contain the specific producer recommendations.
 - b. Within this sample, 79 producer client files lacked a “Financial Inventory Worksheet” or “substantially similar document” as required by the *Producer Guide to Annuity Suitability*.
 - c. Within the sample were instances of misleading advertising by producers, including deceptive comparisons and depictions of rates of return. These materials were used as sales aids but not approved by Allianz.
7. During the examination period, 143 out of 599 total applications identified as replacements were sent outside of the required timeframe, including 10 that were never sent to the replacing carrier.
8. Evidence shows inconsistencies in the complaint register.
9. Company was given an opportunity to review and respond to findings of the examiners, which was taken into consideration in finalizing the report.

Applicable Law

1. K.S.A. 40-222(a) provides, in part:
 - (a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make, or direct to be made, a financial examination of any insurance company in the process of organization, or applying for admission or doing business in this state. In addition, at the commissioner's discretion the commissioner may make, or direct to be made, a market regulation examination of any insurance company doing business in this state.

(b) In scheduling and determining the nature, scope and frequency of examinations of financial condition, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiner's handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this subsection.

(c) For the purpose of such examination, the commissioner of insurance or the persons appointed by the commissioner, for the purpose of making such examination shall have free access to the books and papers of any such company that relate to its business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner or the persons appointed by the commissioner are empowered to administer, the directors, officers, agents or employees of any such company in relation to its affairs, transactions and condition. ...

2. K.S.A. 40-2,125 provides, in part:

a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation;

(2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder; or

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

3. K.S.A. 40-2404 provides, in part:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

- (a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;
- (b) misrepresents the dividends or share of the surplus to be received on any insurance policy;
- (c) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;
- (d) is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;
- (e) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;
- (f) is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy;
- (g) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or
- (h) misrepresents any insurance policy as being shares of stock.

(2) *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other

way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

...

(10) Failure to maintain complaint handling procedures. Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last examination under K.S.A. 40-222 , and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" means any written communication primarily expressing a grievance related to the acts and practices set out in this section.

4. K.S.A. 40-2407 provides:

(a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404, and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period.

5. K.A.R. 40-2-12 Replacement of life insurance and annuities, provides, in part:

(a)(7) "Replacement" means each transaction in which new life insurance may be purchased from an agent who knows, or reasonably should know that, as a party of the transaction in or in consequence of it, a previously existing life insurance has been or is likely to be: (A) Lapsed or surrendered; (B) converted into paid-up insurance, continued as extended term insurance or another form of non-forfeiture benefit; (C) converted to effect a reduction either in the amount of the existing life insurance, or in the period of time the existing life insurance will continue in force; (D) reissued with a reduction in amount so that substantial cash values are released; (E) assigned as collateral for a loan or subjected to substantial borrowing of loan values in single or multiple transactions.

...

(c) Each life insurance agent shall: (1) Obtain a statement signed by the applicant as a part of each life insurance application as to whether the new insurance will replace existing life insurance; and (2) submit to the insurer in connection with each life insurance application a statement as to whether, to the best of the agent's knowledge, a life insurance replacement is involved in the transaction.

(d) When a replacement is involved, each life insurance agent shall: (1) Include as part of each application a list of all existing life insurance policies to be replaced and the name of each insurer which issued the insurance being replaced; (2) present to the applicant, when the application is submitted, a copy of each sales proposal used, and a "notice to applicants regarding replacement of life insurance" described in section (h) in a form acceptable to the commissioner. The agent shall leave the forms with the applicant after explaining their content; (3) submit with the application a copy of each sales proposal used; and (4) have the applicant acknowledge receipt of the "notice to applicant regarding replacement of life insurance."

(e) Each insurer shall: (1) Inform its field representatives of the requirements of this regulation; (2) require with each application a statement signed by the applicant as to

whether the insurance will replace existing life insurance; and (3) require in connection with each application for life insurance a statement signed by the agent as to whether, to the best of the agent's knowledge, a life insurance replacement is involved in the transaction.

(f) When a replacement is involved, the replacing insurer shall:

(1) Require with each application a list prepared by the agent of all existing life insurance policies to be replaced; (2) obtain a copy of any sales proposal used, proof of the receipt by the applicant of the "notice to applicant regarding replacement of life insurance," and the name of each insurer whose insurance is being replaced; (3) within three working days, notify each insurer whose insurance is being replaced by another insurer; (4) delay, if it is not the existing insurer, policy issuance for 20 days after sending the notification required by subparagraph (3). ...

6. K.A.R. 40-2-14a, "Policy and Procedure Regarding Suitability in Annuity Transactions" provides, in part:

Section 1. Purpose

A. The purpose of this Policy and Procedure adopted by the Kansas commissioner of insurance ("commissioner") is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

Section 5. Definitions

A. "Annuity" means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.

...

E. "Insurer" means a company, including a fraternal benefit society, required to be licensed under the laws of this state to provide insurance products, including annuities.

F. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. Insurance producer also includes the terms "insurance agent" or "agent."

G. "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.

H. "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be: (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated; (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values; (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid; (4) Reissued with any reduction in cash value; or (5) Used in a financed purchase.

I. "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 6. Duties of Insurers and of Insurance Producers

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no 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 his or her investments and other insurance products and as to his or her 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, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk; (2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit; (3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and (4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether: (a) 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), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements; (b) The consumer would benefit from product enhancements and improvements; and (c) The consumer has

had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale: (1) Make a record of any recommendation subject to section 6A of this regulation Policy and Procedure; (2) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and (3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this Policy and Procedure, including, but not limited to, the following: (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this Policy and Procedure and shall incorporate the requirements of this Policy and Procedure into relevant insurance producer training manuals; (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this Policy and Procedure; (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers; (d) The insurer shall maintain procedures for review of each recommendation prior to

issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria; (e) The insurer shall maintain reasonable procedure to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any. (2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this Policy and Procedure regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph. (b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii)

Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed. (3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

Section 8. Compliance Mitigation; Penalties

- A. An insurer is responsible for compliance with this Policy and Procedure. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order: (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this Policy and Procedure; (2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Policy and Procedure; and (3) Appropriate penalties and sanctions. B. Any applicable penalty under K.S.A. 40-2407 for a violation of this
- B. Policy and Procedure may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Section 9. Recordkeeping

- A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer. B. Records required to be maintained

by this Policy and Procedure may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

6. K.A.R. 40-9-118 provides, in part:

Section 2. Definitions

For the purpose of this Policy and Procedure:

- A. (1) "Advertisement" means material designed to create public interest in life insurance or annuities or in an insurer or in an insurance producer; or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy including:
- (a) Printed and published material, audiovisual material and descriptive literature of an insurer or insurance producer used in direct mail, newspapers, magazines, radio and television scripts, telemarketing scripts, billboards and similar displays, the Internet, and social media or any other mass communication media.
 - (b) Descriptive literature and sales aids of all kinds, authored by the insurer, its insurance producers, or third parties, issued, distributed or used by the insurer or insurance producer; including but not limited to circulars, leaflets, booklets, web pages, social media, depictions, illustrations and form letters;
 - (c) Material used for the recruitment, training and education of an insurer's insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy;
 - (d) Prepared sales talks, presentations and materials for use by insurance producers.

Section 4.

- A. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as

to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

Conclusions of Law and Orders


Based on the Findings of Fact enumerated in Paragraphs #1 through #14 and the applicable law cited above, **THE COMMISSIONER OF INSURANCE MAKES THE FOLLOWING ORDERS:**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222, and shall retain jurisdiction to issue any further orders deemed necessary.
2. Allianz committed stated violations of Kansas law, as enumerated above.
3. Allianz shall pay a monetary penalty of \$60,000 total for violations of Kansas law.
4. The Report of Market Conduct Examination, including recommendations of examiners, is incorporated into this Order by reference. Allianz shall comply with recommendations of examiners. The Report will be published thirty days after service of Final Order.
5. Allianz neither admits nor denies the violations noted above.

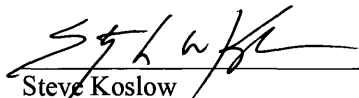
IT IS SO ORDERED THIS 28th DAY OF JUNE, 2019, IN THE CITY OF TOPEKA, STATE OF KANSAS.

BY:




Justin McFarland
General Counsel

APPROVED BY:


Steve Koslow
Vice President and Chief Compliance Officer
Allianz Life Insurance Company of North America
5701 Golden Hills Drive
Minneapolis, MN 55416

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing Consent Agreement & Final Order on this 1st day of July, 2019 by causing the same to be placed in the United States Mail, addressed to the following:

Allianz Life Insurance Company of North America
5701 Golden Hills Drive
Minneapolis, MN 55416


Toni Garrard
Administrative Assistant