

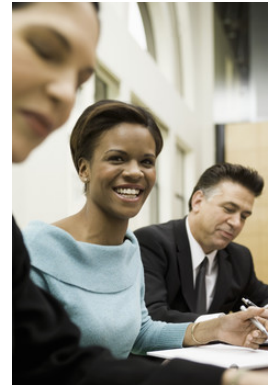
Date: December 22, 2010

From: Chad Eslinger  
Retail Life Compliance Officer and Vice President

## New York Regulation 194: Producer Compensation Disclosure<sup>1</sup>

### I. Summary

New York has issued new regulations regarding compensation disclosure, New York Regulation 194 – Producer Compensation Transparency (the “Regulation”) and the New York Insurance Department (“NY DOI”) has recently released “Circular Letter No. 18: Implementation of and Compliance with 11 NYCRR 30,” dated November 5, 2010. The Circular Letter provides guidance from the NY DOI regarding how a producer must comply with the Regulation. In anticipation of the upcoming effective date (January 1, 2011) of this new regulatory requirement in New York and in light of the recently released Circular Letter, this bulletin highlights some of the responsibilities of producers under the Regulation.



- **Obligation to Disclose** – Producers who have direct sales or solicitation contact with a purchaser must make the required disclosure.
- **Initial Disclosure** – the Regulation mandates that the producer provide an initial disclosure to a purchaser of a policy describing the role of the producer, the source of producer’s compensation, the factors that may cause the producer’s compensation to vary and that the purchaser may request additional information regarding the specific amount of compensation the producer will receive from the sale of the policy.
- **Disclosure Upon Request** - If the purchaser requests additional information on the amount of compensation to be paid the producer, the producer must disclose the amount of known compensation and make a reasonable estimate of unknown or contingent compensation, along with additional information described further below.
- **Methods of Disclosing Compensation** - A producer may disclose compensation as a stated dollar amount or as a percentage of one year of premium. In addition, the Circular Letter allows a producer to disclose known compensation as a percentage of the total premium to be paid over the expected duration of the policy. Use of this approach may allow a producer to amortize the producer’s compensation as a percentage of premium over a number of years rather than showing compensation as a single dollar amount or percentage of annual premium.
- **ReliaStar Life Insurance Company of New York Expected Policy Durations** - In this bulletin, we provide specific guidance on “expected durations” of all ReliaStar Life Insurance Company of New York approved policies currently available for sale.

We have attached to this bulletin a copy of the Circular Letter and the Regulation for your review.

It is important that you review this Bulletin, the Regulations and the Circular Letter in their entirety.

**THE EFFECTIVE DATE OF THIS NEW DISCLOSURE OBLIGATION IS JANUARY 1, 2011.**

<sup>1</sup> This bulletin discusses only the sale of individual life policies and does not address the application of Regulation 194 to the sale of individual annuity, group insurance policies or any other type of insurance contracts.  
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## II. Summary of the Regulation - Mandatory Initial Disclosure – Subsection 30.3(a)

An insurance producer selling an insurance contract must disclose, orally or in prominent writing, the information summarized in the Table below:

Mandatory Initial Disclosures – the Regulation		
1.	<b>Role of the Agent</b>	A description of the role that the insurance producer plays in the sale of the insurance contract;
2.	<b>Source of Compensation</b>	Whether the insurance producer will receive compensation from the selling insurer or other third party based in whole or in part on the insurance contract the producer sells;
3.	<b>Variability of Compensation</b>	That the compensation paid by the insurance company to the producer may vary depending on a number of factors, including the type of contract, the volume of business generated by the producer and the profitability of the product to the insurer; and
4.	<b>Expected Compensation – actual sale and alternative quotes<sup>2</sup></b>	The producer must tell the purchaser that he or she may obtain specific information from the producer about the actual compensation expected to be received by the producer from the sale of the policy as well as the expected compensation the producer might have received from any alternative quotes presented by the producer.

### Key Points:

1. **Timing.** The disclosure must take place no later than the application for the insurance contract.
2. **Sales Subject to the Regulation.** The new Regulation applies to the sale of any type of insurance contract including annuity or life insurance contracts. It also applies to group insurance sales in New York.
3. **Disclosure Format.** No particular format is specified for the disclosure. We have attached to this bulletin as Exhibit A, a disclosure that could be used as a template disclosure form.<sup>3</sup> You may choose to create your own form of disclosure. As stated in the Circular Letter, a “boilerplate” form may be used and may be only a few sentences long.
4. **Oral vs. Written Disclosure.** The Regulation allows for oral or written communication of the mandatory initial disclosure. If the oral disclosure is made, the insurance producer must provide follow up with a written disclosure no later than the issuance of the policy. Producers might consider having the purchaser of the policy sign and acknowledge receipt of the disclosure.
5. **Prominent.** Written disclosures must be “prominent”. The Circular Letter and the Regulation do not define or provide examples of prominent disclosures. It is recommended that the disclosure be a stand alone form so that the producer can be sure that the disclosure is sufficiently prominent.



<sup>2</sup>The disclosure must also include a statement indicating whether the producer is prohibited by law from altering the amount of compensation received from the insurer for the sale.

<sup>3</sup>The form in Exhibit A is based on disclosure language provided to the NY DOI by the Professional Insurance Agents in a letter dated June 2, 2010. In the letter, the NY DOI indicates that the disclosure complies with Section 30.3(a) of Regulation 194.

### III. Disclosure Upon Request of the “Amount” of Known Compensation - Section 30.3(b)

If a purchaser requests additional information about the producer’s compensation prior to the issuance of the contract, the amount of compensation must be disclosed in prominent writing no later than the issuance of the contract.<sup>4</sup> If such a request is received, the information in the Table below must be disclosed:

Disclosure of Amount of Known Compensation		
1.	<b>Amount of Compensation</b>	A description of the nature, amount and source of any compensation to be received by the producer based in whole or in part on the sale;
2.	<b>Alternative Quotes</b>	A description of any alternative quotes presented by the producer, including coverage, premium and compensation that the producer would have received in whole or in part on any such alternative quote;
3.	<b>Material Ownership of Insurer</b>	A description of any material ownership interest the producer has in the insurer issuing the insurance contract; and
4.	<b>Material Ownership of Producer</b>	A description of any material ownership interest the insurer issuing the insurance contract has in the insurance producer. <sup>3</sup>

#### Key Points:

1. **Compensation.** The Regulation defines “compensation” broadly to include “anything of value, including money, credits, loans, interest on premium, forgiveness of principal or interest, trips, prizes, or gifts, whether paid as commission or otherwise.” However, compensation does not include tangible goods with the name of the insurer having an aggregate value of less than \$100.
2. **Timing.** The compensation disclosure must occur prior to the issue of the contract.
3. **Oral vs. Written Disclosure.** While the disclosure may be provided orally, it must then be followed up with a prominent writing prior to the issuance of the contract.<sup>5</sup>
3. **Known vs. Unknown Compensation.** The Regulation distinguishes between compensation which is “known” at the time of the disclosure and compensation which is “unknown” at the time of the disclosure such as contingent compensation that is dependent upon a future occurrence such as meeting sales volume, profitability or retention targets. The Regulation provides different approaches to disclosing “known” versus “contingent” compensation.
4. **Prohibition on Misleading Statements.** The insurance producer must not make misleading statements to a purchaser contradicting the disclosures required by the Regulation or make any other misleading or knowingly inaccurate statements about the role of the insurance producer in the sale or his or her compensation.
5. **Disclosure Format.** No particular format or form is prescribed by the Regulation. The sample form is attached to this bulletin as Exhibit C can be used as a guide for producers to design their own disclosure form.

### IV. Methods of Disclosing Known Compensation

<sup>4</sup> If “time is of the essence” to issue the insurance contract, the compensation information may be disclosed within five (5) business days.

<sup>5</sup> With respect to disclosure items 1 – 3, the disclosures also apply to any parent, subsidiary or affiliates of the producer as well as whether the producer owns any interest in any parent, affiliate or subsidiary of the insurer. In the situation where the insurer owns an interest in the producer under disclosure item 4 in the table, a disclosure related to whether the insurer owns any interest in any parent, subsidiary or affiliate of the producer.

The Circular Letter provides further clarification on how the “amount” of known compensation may be disclosed. In the Circular Letter, the NY DOI explains that a producer may choose any one of three methods of disclosing the amount of known compensation.

1. **Total Dollar Amount** – total compensation expressed as the total dollar amount expected to be received in whole or in part on the sale;
2. **Percentage of One Year of Premium** – the total compensation may be stated as a percentage of one year of premium;
3. **Percentage of Total Premium Over Expected Duration of the Policy** – recognizing that compensation is typically higher in the early years of the policy, the Circular Letter provides that the producer may disclose known compensation on an amortized basis as a percentage of total premium expected to be paid over the duration of the policy. For this approach to be acceptable the disclosure must state the expected duration used<sup>6</sup> and that most compensation is paid in the first year if that is the case, or that most of the compensation is paid in the first five years if that is the case.



**Example:** “I expect to receive as compensation from the insurer 8% of the total premium you pay on this policy if you keep the policy in place for 13 years which is the expected average duration of this type of policy. Most of that compensation will be paid in the first year.”

#### **Practice Pointer – Amortizing Compensation Using ReliaStar Life Insurance Company of New York Expected Durations**

Attached to this Bulletin as Exhibit B is a table of expected average durations of policies currently offered by ReliaStar Life Insurance Company of New York which may be used by producers to disclose compensation using the expected duration method. We have also provided an example in Exhibit B on how to use the table.

## **V. Unknown or Contingent Compensation**

As indicated above, the amount of compensation a producer expects to receive may not be determinable at the time of disclosure, i.e. prior to the issuance of the contract because its value depends of future events. Such types of contingent compensation include payments based upon meeting sales volumes, persistency or profitability targets. For such contingent compensation, a producer must describe and provide a reasonable estimate of the contingent compensation.

### **Description of Contingent Compensation**

The Regulation requires that the producer provide a description of the circumstances that may determine the amount or value of such contingent compensation. The Circular Letter provides simply that the description of contingent compensation may be general in nature without detailing the structure of the payments. As an example, the Circular Letter provides:

“I may also be eligible for additional compensation depending on a number of factors including premium, volume, losses and profitability.”

<sup>6</sup> If a purchaser requests more information about the producer’s compensation after the issuance of the contract but less than thirty (30) days after issuance, the producer must make the compensation disclosures required by Regulation 194 to the purchaser in a prominent writing.

### **Determining Reasonable Estimates**

A producer must make a reasonable estimate of the amount of contingent compensation to be paid and the Circular Letter allows a number of different approaches to make the estimate.

- **Range of Percentages** – a reasonable range of percentages of premium based on the amount of such compensation the producer has received on the sale of similar policies in prior years;
- **Range of Dollar Amounts** – a reasonable range of dollar amounts based on the amount of such compensation the producer has received on the sale of similar policies in prior years;<sup>7</sup>
- **Expected Durations** - a producer may estimate the unknown compensation as an additional range of percentages of total premium paid over the average duration of the policy.

### **Practice Pointer- Amortizing Estimated Compensation Using Expected Durations**

As an alternative to making a reasonable estimate based upon sales of similar policies in prior year, a producer may use expected durations of a policy or contract in estimating contingent compensation. For example:

“In addition to the compensation disclosed above, I also expect to receive additional contingent compensation from the insurer that may range from 2% to 5% of the total premium you pay on this policy if the policy is kept in force for 13 years which is the expected average duration of this type of policy.”

See Exhibit B attached to this Bulletin for the expected durations for ReliaStar Life Insurance Company of New York policies currently offered in New York by policy type.

## **VI. Administrative Considerations**

### **Recordkeeping**

A producer must keep a copy of any written disclosure provided to a purchaser under the Regulation for a period of at least three (3) years. It is recommended that the producer keep the record at least three (3) years and may want to retain such records for seven (7) years.

### **Wholesaler/Managing General Agents**

The Regulation provides that the insurance producer “selling the insurance contract” has the obligation to make the disclosure required by the Regulation. The Circular Letter clarifies that a “wholesaler or “managing general agent” whose primary contact is with the selling agent does not have to make the disclosure so long as they do not have any contact with the purchaser of the policy.

## **VII. Conclusion**

The Regulation and the Circular Letter create an important new disclosure obligation on producers. It is critical that producers become familiar with the requirements of the Regulation<sup>8</sup> and begin complying as of January 1, 2011.

For any questions please contact ING Life Sales Support at 866-ING-SELL (866-464-7355).

Thanks for your continued trust and confidence in the ING Life Companies.

Life insurance products are issued by ReliaStar Life Insurance Company of New York (Woodbury, NY), member of the ING family of companies.

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<sup>1</sup> If the producers' contingent compensation received based upon the sale of similar policies in prior years is not readily available or calculable, the producer may use and estimate provided by the insurer based upon the average amount of such compensation paid to producers per dollar of premium for similar policies.

<sup>8</sup> The discussion of Regulation 194 in the bulletin is for informational purposes and you should not rely on the information in this bulletin for determining what is necessary for you to comply with New York Insurance Regulation 194. For the application of Regulation 194 to any particular sale or your circumstances, you should consult your own attorney.

## EXHIBIT A

### INITIAL PRODUCER COMPENSATION DISCLOSURE – NEW YORK REGULATION 194

*Instructions for insurance producer: You must comply with the requirements of New York State Insurance Department Regulation 194 regarding compensation disclosure at the time of application for all policies sold in New York. Regulation 194 requires certain information be disclosed prominently in writing. If you do not have a form for complying, this form may be used.*

*You should complete the information regarding producer name and insurance company; obtain a copy of your customer's signature and date. You should provide one copy for the customer and retain a copy for your file.*

***A copy is not required for the Insurance Company.*** *An additional separate form must be used if the applicant requests additional information regarding your compensation.*

**The following disclosures are made pursuant to Section 30.3(a) of New York State Insurance Department Regulation 194.**

1. [ \_\_\_\_\_ ] (enter name as it appears on license), (the "producer") is an insurance producer licensed by the State of New York.
2. Insurance producers are authorized by their license to confer with insurance purchasers about the benefits, terms, and conditions of insurance contracts; to offer advice concerning the substantive benefits of insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of the producer in any particular transaction typically involves one or more of these activities.
3. Compensation will be paid to the producer, based on the insurance contract the producer sells.
4. Depending on the insurer(s) and the insurance contract(s) the purchaser selects, compensation will be paid by the insurer(s) selling the insurance contract or by another third party.
5. The producer's compensation may vary depending on a number of factors, including the insurance contract(s) and the insurer(s) the purchaser selects. In some cases, other factors such as the volume of business a producer provides to an insurer or the profitability of insurance contracts a producer provides to an insurer also may affect compensation.
6. The insurance purchaser may obtain information about compensation expected to be received by the producer based in whole or in part on the sale of insurance to the purchaser, and (if applicable) compensation expected to be received based in whole or in part on any alternative quotes presented to the purchaser by the producer, by requesting such information from the producer.

By my signature below, I acknowledge that I have received a copy of this document.

Purchaser Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT B

### ReliaStar Life Insurance Company of New York Expected Durations by Policy Type

Product Name	Form Filing Number	Duration
ING Universal Life-CV NY	# 3001	12
ING Guaranteed Death Benefit Universal Life II NY	# 3000	12
ING Protector UL NY	# 87-134	13
ING TermSmart*NY - 10 Years	# 3314	9
ING TermSmart*NY - 15 Years	# 3314	15
ING TermSmart*NY - 20 Years	# 3314	20
ING TermSmart*NY - 25 Years	# 3314	20
ING TermSmart*NY - 30 Years	# 3314	21
ING ROP Endowment Term NY - 20 Years	# 3313	20
ING ROP Endowment Term NY - 25 Years	# 3313	25
ING ROP Endowment Term NY - 30 Years	# 3313	24

#### Example Assumptions

**Product sold:** ING TermSmart\*NY 10 Years; **Duration:** as described in the chart is nine years  
**First Year Commission Rate:** 45% of first year premium; **Renewal or Trail Commission:** 0%  
**Annual Premium Due:** \$1,100

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Utilizing the information above, this example below provides compensation disclosure as expressed by a **Total Dollar Amount**.

The Total Dollar Amount calculation is: First Year Commission Rate % multiplied by \$1,100

**Or** as by our example above: 45% multiplied by \$1,100 = \$495

The insurer will compensate the producer **\$495** based on the sale of this policy.

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Utilizing the information above, this example below provides compensation disclosure as expressed by a **Percentage of One Year of Premium**.

The Percentage of One Year of Premium is: First Year Commission Rate

**Or** as by our example above: 45%

The insurer will compensate the producer **\$495** based on **45%** of one year of premium of **\$1,100**.

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Utilizing the information above, this example below provides compensation disclosure as expressed by a **Percentage of Total Premium Over Expected Duration of the Policy**.

The Percentage of Total Premium Over Expected Duration of the Policy is: First Year Commission Rate % divided by total duration

**Or** as by our example above: 45% divided by 9 years = 5%

The insurer will pay the producer **5%** of the total premium you pay on this policy if you keep the policy in place for **9** years which is the expected average duration of this type of policy. Most of that compensation will be paid in the **[X]** first year or [ ] first five years.

Life insurance products are issued by ReliaStar Life Insurance Company of New York (Woodbury, NY), member of the ING family of companies.

EXHIBIT C

Additional Producer Compensation Disclosure – New York Regulation 194 Section 30.3 (b)

Instructions for insurance producer:

Section 30.3(a) of the New York State Insurance Department Regulation 194 requires insurance producers to make certain compensation disclosures at the time of application for all policies.

If the purchaser requests additional information, section 30.3(b) of Regulation 194 requires the insurance producer to provide in a written disclosure the amount of compensation the insurance producer is expected to be paid for the sale of the policy and other information.

The insurance producer has the responsibility of complying with the disclosure requirements of Regulation 194. The Insurance Company does not assume or undertake such obligation or responsibility and has provided this form solely as a convenience to the insurance producer.

This form may be used with respect to applications for life insurance policies if the purchaser has requested additional compensation information. Insurance producers may use this form by inserting information which identifies the insurance product, inserting the insurance producer's name and the name of the insurance company; and then completing the compensation disclosures below that apply to the product for which the purchaser has applied. The insurance producer should ask the purchaser to sign and date the form to indicate receipt, and leave one copy with the purchaser and retain a copy for the insurance producer's file.

A copy is not required to be submitted to the Insurance Company.

Name of Insurance Producer: \_\_\_\_\_

Name of Insurance Company: \_\_\_\_\_

Identification of the Policy for which Application is made (identify policy by such factors as type of product, name of product, name of proposed insured person, amount of coverage, etc.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please elect the form of compensation disclosure from the choices below by marking with an "X" and complete that section which applies to the form of compensation disclosure the insurance producer will be making. For purposes of the required disclosures "compensation" includes anything of value, including money, credits, loans, interest on premium, forgiveness of principal or interest, trips, prizes or gifts, whether paid as commission or otherwise.

I. Expected Compensation Disclosure

If requested by the purchaser, the producer must disclose the amount of compensation the producer is expected to receive from the insurer as elected below:

[ ] **Total Dollar Amount.** Compensation to be described as the total dollar amount expected to be received based in whole or in part on the sale.  
The insurer will compensate the producer \$\_\_\_\_\_ based on the sale of this policy.

[ ] **Percentage of One Year of Premium.** Compensation to be described as the total amount expected to be received based in whole or in part on the sale stated as a percentage of one year of premium.  
The insurer will compensate the producer \$\_\_\_\_\_ based on \_\_\_\_\_% of one year of premium of \_\_\_\_\_.

[ ] **Percentage of Total Premium Over Expected Duration of the Policy.** Compensation to be disclosed as a percentage of the total premium paid over the expected duration of the policy or contract. For such a disclosure to be acceptable, it must state (1) the expected duration used (which must take account of appropriate mortality and termination rates for the kind of policy being sold), and (2) that most compensation is paid in the first year if such is the case, or that most of the compensation is paid in the first 5 years if such is the case.

The insurer will pay the producer \_\_\_\_\_% of the total premium you pay on this policy if you keep the policy in place for \_\_\_\_\_ years which is the expected average duration of this type of policy. Most of that compensation will be paid in the [ ] first year or [ ] first five years.

## II. Contingent Compensation

If compensation is not known at the time of request, the producer must provide a description of the circumstances that may determine the receipt and the amount or value of such compensation and a reasonable estimate of the amount or value, which may be stated as a range of amounts or values. Compensation is "not known at the time of disclosure" when it is contingent upon some future occurrence such as meeting sales volume, profitability or retention targets. A reasonable estimate may be based upon sales of similar policies in prior years stated as a range of percentages or a range of the total dollar amount of compensation the producer will receive. Alternatively, the producer may provide an estimate based upon a range of percentages over the expected duration of the policy.

### Description.

The producer expects to receive contingent compensation depending upon the following circumstances [describe]:

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### Estimate of Contingent Compensation.

- [ ] **Range of Percentages.** The Contingent compensation the producer will receive is estimated to be between \_\_\_\_\_% and \_\_\_\_\_% based on sales of similar policies in prior years.
- [ ] **Range of Total Dollar Amount.** The contingent compensation the producer will receive is estimated to be between \$\_\_\_\_\_ and \$\_\_\_\_\_ based on sales of similar policies in prior years.
- [ ] **Range of Percentages Over Expected Duration of the Policy.** The insurer will pay the producer between \_\_\_\_\_% and \_\_\_\_\_% of the total premium you pay on this policy if you keep the policy in place for \_\_\_\_\_ years which is the expected average duration of this type of policy. Most of that compensation will be paid in the [ ] first year or [ ] first five years.

*Producers are required to complete the following additional information if applicable (please insert or, if additional space is needed, add attachments with such information):*

A description of any alternative quotes presented by the insurance producer, including the coverage, premium and compensation the insurance producer, any parent, subsidiary or affiliate would have received based in whole or part on the sale of any such alternative coverage:

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A description of any material ownership interest the insurance producer or any parent, subsidiary or affiliate has in the insurer issuing the insurance contract or any parent, subsidiary or affiliate:

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A description of any material ownership interest the insurer issuing the contract or any parent, subsidiary or affiliates has in the insurance producer or any parent, subsidiary or affiliate:

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A statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer based in whole or in part on the sale:

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By my signature below, I acknowledge that I have received a copy of this disclosure document in response to my request for additional information regarding the producer's compensation.

Purchaser's Signature: \_\_\_\_\_ Date: \_\_\_\_\_