

**State of Rhode Island
DEPARTMENT OF BUSINESS REGULATION
Insurance Division
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920**

IN THE MATTER OF:

XL SPECIALTY INSURANCE COMPANY

RESPONDENT.

DBR No. 2021-IN-003

CONSENT AGREEMENT

It is hereby agreed between the Rhode Island Department of Business Regulation (“Department”) and XL Specialty Insurance Company (“Respondent XL” or “XL Specialty Insurance”) as follows:

1. Respondent XL is an insurance company domiciled in the state of Delaware that is licensed as a foreign property and casualty insurance company (NAIC CoCode 37885) and has been licensed in Rhode Island and authorized to write the inland marine line of business since 1995 (pet insurance is currently categorized as inland marine insurance).

2. In Rhode Island, Respondent XL markets a pet insurance policy that has been filed for approval by the Department and that policy was approved by the Department in 2016.

3. During the time relevant to this Consent Agreement, Respondent XL only markets that pet insurance policy in Rhode Island through a managing general agent (“MGA”) and insurance producer (“producer”) Fetch Insurance Services, LLC.

Promotional Offers

4. In a form filing that Respondent XL submitted to the Department, and that the Department approved, Respondent included language that it would offer promotions to its named

insureds. That language was approved by the Department initially in 2016 and has been included in several updates to Respondent's form filings with the Department. The language reads:

PROMOTIONAL OFFERS

Each named insured may receive from time to time certain promotional offers. These offers include but are not limited to gift cards, coupons, gift certificates, items of merchandise, and similar promotional items. But in no event will promotional items exceed a value of thirty-five dollars (\$35.00).

5. The Department approved this language with the expectation that Respondent would adhere to state laws and regulations with respect to inducements and rebates.

6. The language in paragraph 3 does not specify how it will be used. It is general language implying that Respondent might from time to time offer gifts to its named insureds. It does not state that it will offer regular promotions to prospective insureds to entice them to sign-up if they remain insured for thirty days.

How and When Inducements to Contract were Offered

7. In the spring of 2021, the Department signed up to receive quotes from various pet insurers. As a result of receiving those quotes, the Department received follow-up emails from numerous insurers or their producers with various insurance solicitations. Relevant to this matter, employees of the Department signed up for quotes from both www.gopetplan.com and www.walmartpetinsurance.com.

8. On April 22, 2021, Respondent's MGA Fetch Insurance Services, LLC. ("Fetch") sent an email to a Departmental employee with the subject line "Today only: Enroll Petplan + get a \$25 Visa gift card!" This email included several buttons labeled "Enroll now" as well as a large banner stating, "Get a \$25 Visa card."

9. In small print at the bottom of the email, more details about the offer were included. Those stated that the "Gift card offer valid on new policies only. Policy must be active for 30 days to be eligible to receive gift card. Renewals are not eligible for this promotion."

10. On April 23, 2021, the Departmental employee received an email with the subject line “questions about Petplan’s plan?” In that email was a link stating “Enroll now and get a \$25 Visa gift card.” This suggests that the \$25 offer from April 22nd was intentionally misleading when it stated, “today only.”

11. Through May 20, 2021, Departmental employees received numerous other solicitations for Respondent’s pet insurance, offering \$25 gift cards, stating “last chance,” “one day left,” and “time is running out,” referring to the gift card offer expiration. None of those statements were true in context as future emails followed with additional offers of the \$25 gift card for signing up.

12. On May 7, 2021, Respondent’s MGA Fetch sent an email to a different Departmental employee with the subject line “One more day: We forgot to turn off this great deal.” Within that email was an offer “EXTENDED! Get a \$25 Walmart gift card!”

13. Respondent’s MGA Fetch explained that they have offered six other gift cards beyond the two offered to Departmental employees since 2018 in a variety of campaigns. And the MGA Fetch identified that the gift card promotions have been marketed through “online websites, online ‘re-marketing’ banners, email, agents, veterinarians and digital affiliate programs and partnerships.”

14. Offering a gift as an inducement to enter into an insurance contract is prohibited by Rhode Island statutes because it can cause a consumer to make a choice based on the offered inducement instead of making a choice based on the offered insurance product. The statutes in question have prohibited inducements and rebates tied to the sale of insurance products since the 1950s.

15. The offers not only presented an inducement of a \$25 gift card, but it also created a sense of urgency in the offer by stating “today only,” “one more day,” or stating that the offer was ending soon. Those statements were all incorrect based on other later emails with the same offer. The Department believes that this false sense of urgency amounts to a material misrepresentation.

The Department’s Position on Rebates and Inducements

16. Offering a gift as an inducement to enter into an insurance contract is prohibited by Rhode Island statutes. This prohibition was adopted because such inducements can cause a consumer to make a choice based on the offered inducement instead of making a choice based on the merits of the insurance product. The statutes in question have prohibited inducements and rebates tied to the sale of insurance products since the 1950s.

17. The offers not only presented an inducement of a \$25 gift card, but it also created a sense of urgency in the offer by stating “today only,” “one more day,” or stating that the offer was ending soon. Those statements were all incorrect based on other later emails with the same offer. The Department believes that this false sense of urgency amounts to a material misrepresentation.

18. The Department has a longstanding policy with respect to inducements: if a licensee makes the offer available to all consumers regardless of whether the consumer binds coverage, then the licensee may make the offer. Rhode Island law prohibits the tying of the item to the purchase of insurance. This interpretation was publicly articulated more than a decade ago via [Insurance Bulletin 2009-9](#), which remains available on the Department’s website. The Bulletin states “a licensee is expressly prohibited from giving a “gift” which requires the actual purchase of an insurance policy.” The Bulletin lays out three conditions under which a licensee might offer gifts in exchange for a quote, of which the first condition was that “the gift is not contingent on the purchase or renewal of a policy.” The Department has answered questions with respect to this topic

countless times since 2009 and has consistently pointed licensees to the Bulletin for its position on inducements and rebating.

19. Respondent XL have stated that the offer was specified in the pet insurance policy that was filed with and approved by the Department. The Department's position is that the policy filing was not specific as to when the offers would be made. Had the language been clear with respect to Respondent's intended offer, the Department would not have intentionally approved the language.

XL's Oversight of the Marketing of its Insurance Policies

20. XL is charged with overseeing the marketing and sales of its insurance products. XL has an MGA agreement with Fetch allowing it to oversee Fetch's marketing of XL's products. The MGA agreement requires XL to review all marketing emails from Fetch before they are used to solicit consumers.

21. The Department received nine emails in the spring and summer of 2021 that appeared to present a false sense of urgency to the recipient. The Department presented those emails to Respondent XL, and the Respondent agreed that the emails were inappropriate. Respondent indicated that it had reviewed its files and found "no documentation that the specified e-mail templates were reviewed and approved by the Company prior to use by Fetch."

Relevant Rhode Island Law and Regulations

22. R.I. Gen. Laws § 27-29-4 prohibits unfair and deceptive acts or practices in the business of insurance.

23. R.I. Gen. Laws § 27-29-4(1) prohibits misrepresentations by act or omission with regards to policies, contracts or other sales materials.

24. R.I. Gen. Laws § 27-29-4(2) prohibits the presentation of advertisements relating to the business of insurance that are "untrue, deceptive, or misleading."

25. R.I. General Laws § 27-29-4(8) prohibits an insurer from providing valuable consideration or inducements in the issuance of an insurance contract and prohibits rebating of premiums in insurance products unless those are specified in the policy. This language is based on the National Association of Insurance Commissioner's ("NAIC") model unfair trade practices Act, Section 4(H)(I).

26. R.I. General Laws §§ 27-6-46 and 27-9-44 prohibit the provision of valuable consideration or inducements in the issuance of a property or accident insurance contract and prohibits rebating of premiums in property and accident insurance products.

27. R.I. General Laws § 27-9-44 prohibits the provision of valuable consideration or inducements in the issuance of a casualty insurance contract and prohibits rebating in property insurance products.

28. The Department has longstanding public guidance with respect those rebating and inducement sections of law since at least 2009 that remains available on the Departments' website.

29. R.I. Gen. Laws § 42-14-16 outlines administrative penalties available for violations of the above cited laws, including fines up to \$50,000 per violation.

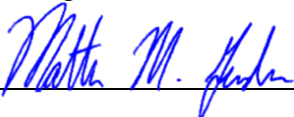
THEREFORE, based on the foregoing, Respondent and the Department have decided to resolve this matter without further administrative proceedings and hereby agree to the following:

- I. Respondent acknowledges that the gift card offer was an inducement under Rhode Island laws.
- II. Respondent acknowledges that its producer and managing general agent did send emails containing a false sense of urgency that amounted to material misrepresentations.
- III. Respondent agrees it has taken steps to ensure that future marketing material will be reviewed by Respondent before it is utilized.

- IV. Respondent agrees to not offer inducements to contract for its insurance policies in Rhode Island, unless clearly laid out in Respondent's filed and approved insurance policy forms.
- V. Respondent agrees to pay an administrative fine within thirty-days of fifteen thousand dollars (\$15,000) to resolve this matter.
- VI. Waiver of Hearing and Appeal. By agreeing to resolve this matter through the execution of this Consent Agreement, Respondent knowingly and voluntarily waives any right to an administrative hearing and waives any right to pursue an appeal to the Superior Court under the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.*
- VII. Enforcement. If the Respondent fails to comply with any term or condition of this Consent Agreement within any applicable time period set forth herein, the Respondent will be in violation hereunder and the Department shall be entitled to immediately to take enforcement or other action in accordance with applicable law.
- VIII. Compliance; Other Laws. Compliance with the terms of this Consent Agreement does not relieve the Respondent of any obligation to comply with other applicable laws or regulations administered by or through the Department or any other governmental agency.

Counsel for the Department and Respondent hereby consent and agree to the foregoing on behalf of their respective clients this 3rd day of December 2021.

Department of Business Regulation
By its Legal Counsel,



XL Specialty Insurance Company
By its General Counsel

