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February 19, 2020

Ms. Rossana Rosado
Secretary of State
Department of State
99 Washington Avenue, 11th Floor
Albany, NY 12231

Re: Do Not Call Enforcement Efforts
Report 2019-F-48

Dear Ms. Rosado:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of State to implement the recommendations contained in our audit report, *Do Not Call Enforcement Efforts* (Report [2017-S-55](#)), issued September 28, 2018.

Background, Scope, and Objective

The New York State Do Not Call law (Law) allows consumers to register their personal mobile and landline phone numbers on a central national registry to reduce unsolicited telemarketing calls. The Department's Division of Consumer Protection (Division) is responsible for enforcing the Law, which took effect in 2001. Initially, New York consumers registered their phone numbers on a statewide registry. In 2003, the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) collaborated to create the National Do Not Call Registry (Registry), and consumers' phone numbers that were previously on the New York registry were transferred to the national Registry. The Division uses the national Registry to retrieve New York complaints about potential violations of the Law, and also receives complaints by phone and email.

The Law was amended in 2010 to include automated calls, known as robocalls, and again in 2016 to require telemarketers to reveal caller identification information so consumers know who is calling and can take steps to block unwanted calls. In December 2019, the Nuisance Call Act was enacted, which requires live (i.e., not automated) telemarketers or sellers to give consumers the option to be added to the seller's entity-specific Do Not Call list and to have express consent from the consumer before sharing or selling their contact information. Also, in December 2019, a new federal law was enacted

requiring phone service providers to utilize software to block robocalls and to provide this service free of charge to consumers.

The Division investigates complaints to determine if a violation of the Law has occurred, takes actions to enforce and resolve complaints, and provides information and outreach to consumers. Violators may be subject to penalties up to a maximum of \$11,000 per violation (a 2020 proposal would double that to \$22,000). According to the Division's 2018 annual report, as of December 31, 2018, there were 15.1 million New York phone numbers on the Registry, and there were 363,668 complaints associated with New York phone numbers in 2018. The Division reported having investigated 34,864 alleged violations with the goal of ending unlawful conduct.

Our initial audit report, which covered the period January 1, 2014 through April 20, 2018, sought to determine whether the Department was fully implementing the enforcement and collection provisions of New York's Do Not Call Law.

The objective of our follow-up review was to assess the extent of implementation, as of January 9, 2020, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

We found that the Department has implemented all three recommendations from our initial audit report.

Follow-Up Observations

Recommendation 1

Assess current and planned Do Not Call enforcement activities to determine appropriate staffing levels, identify timing benchmarks for key enforcement efforts, and identify improvement opportunities.

Status – Implemented

Agency Action – After our initial audit, the Division conducted a comprehensive review to examine its overall approach to both investigating Do Not Call complaints and ensuring adequate staffing for related enforcement actions. To enhance enforcement efforts, the Division increased the number of personnel whose duties include Do Not Call efforts from five to seven individuals, including filling key vacancies that existed during our initial audit.

The Division now maintains information in its electronic database about the timeliness of investigative steps. For example, the Case Status table shows the current status of a case, including the date a case is first opened; other information shows tasks assigned and completed by Investigations Unit staff.

The Division also took steps to identify and address improvement opportunities in its Do Not Call enforcement activities. Division officials informed us that, in recognition of the changing landscape of telemarketing techniques, the Division's

comprehensive review resulted in a revamping of its process to identify potential Do Not Call violators and build related cases. For example, personnel now download Do Not Call complaints in their entirety from the FTC Sentinel database on a daily basis, whereas the previous practice was to download only select information and with no established frequency. In addition, the Division now maintains complaint data in a shared database, where personnel can analyze it to identify similarities, such as phone numbers, key words, and phrasing, to assist in building a case. At the time of the initial audit, this information was maintained in spreadsheets by individual personnel and was not shared.

Recommendation 2

Develop, implement, and communicate written procedures to Division staff that address the accuracy, completeness, and comparability of internally maintained Do Not Call information.

Status – Implemented

Agency Action – Since our initial audit, the Division has developed a comprehensive Investigation Unit Procedures and Database Manual (Manual), which includes, for example, guidance about utilizing analytical tools and about the process for and information needed to develop a case and follow it through to the extent possible. The Manual also includes definitions of information to help ensure data accuracy, completeness, and comparability.

Recommendation 3

Evaluate the potential for using FTC resources and strategies (including expanded use of Sentinel capabilities) and consumer-friendly alternatives to notarized affidavits to enhance the Division’s Do Not Call enforcement capabilities, and document the resulting decisions.

Status – Implemented

Agency Action – The Division has taken meaningful steps to both make use of FTC resources and pursue ways to reduce the efforts required by consumers in building cases against potential Do Not Call violators. As described above, Division personnel are now retrieving State consumer complaints from the FTC Sentinel database in their entirety and on a daily basis. In addition, in November 2019, the Division entered into a Memorandum of Understanding with the FCC’s Enforcement Bureau to work collaboratively to investigate and, where appropriate, take enforcement actions, including prosecution. The Division also belongs to the National Attorneys General Association Automatic Dialing Announcing Device Work Group, which includes representatives from other states and the FCC. The group meets monthly to discuss strategies, best practices, and success stories. Finally, the Division has partnered with several state and federal agencies to participate in the FTC’s Operation Call It Quits, which is part of the FTC’s ongoing effort to reduce the number of illegal robocalls.

The Division has also taken steps to reduce the actions it requires from consumers in verifying information and building cases. Since our initial audit, the Division no longer requires that complainants submit notarized affidavits to verify their Do Not Call complaint-related information. Instead, complainants now may submit a signed affirmation affirming their complaint information for the record. This makes it easier for consumers to pursue their complaints and increases the likelihood that they'll provide the necessary information, which gives the Division a better chance of building cases against potential violators.

Major contributors to this report were Sharon Salembier, CPA, CFE; Karen Bogucki, CGFM; Donald Cosgrove; and Kathy Gleason.

We thank Department management and staff for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Division of the Budget