

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

OM FINANCIAL LIFE INSURANCE COMPANY
Baltimore, Maryland

**AS OF
April 15, 2008**

COMMONWEALTH OF PENNSYLVANIA



**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: June 10, 2008

OM FINANCIAL LIFE INSURANCE COMPANY

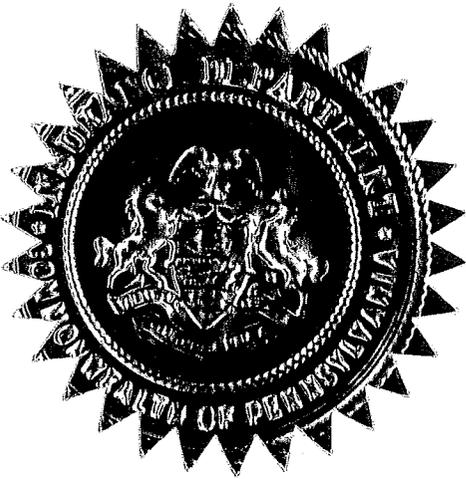
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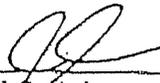
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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 6th day of July, 2007, in accordance with
Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921,
P.L. 789, as amended, P.S. § 323.5, I hereby designate Randolph L. Rohrbaugh, Deputy
Insurance Commissioner, to consider and review all documents relating to the market
conduct examination of any company and person who is the subject of a market conduct
examination and to have all powers set forth in said statute including the power to enter
an Order based on the review of said documents. This designation of authority shall
continue in effect until otherwise terminated by a later Order of the Insurance
Commissioner.





Joel S. Ario
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
OM FINANCIAL LIFE INSURANCE : Sections 641-A and 671-A of Act 147
COMPANY : of 2002 (40 P.S. §§ 310.41 and
1001 Fleet Street, 6th Floor : 310.71)
Baltimore, MD 21202 :
: Sections 404-A, 406-A, 408-A(c)(4)(i),
: and (ii), 408-A(e)(1)(i) and (ii),
: 408-A(e)(5), and 410D(a)(3)(b)(1) of
: the Insurance Company Law, Act
: of May 17, 1921, P.L. 682, No. 284
: (40 P.S. §§ 625-4, 625-6, 625-8 and
: 510)
: :
: Title 31, Pennsylvania Code, Sections
: 51.5, 81.4(b)(1), 81.5(b), 81.6(a)(1),
: 81.6(a)(2)(ii), 81.6(c), 83.3, 83.4a,
: 83.4b, 83.55, 83.55a, 83.55b, 83.55c,
: 146.5, 146.6 and 146.7
: :
Respondent. : Docket No. MC08-05-025

CONSENT ORDER

AND NOW, this *10th* day of *JUNE*, 2008, this Order is hereby
issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant
to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order shall have the full force and effect of an order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra. or other applicable law.

FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is OM Financial Life Insurance Company, and maintains its address at 1001 Fleet Street, 6th Floor, Baltimore, Maryland 21202.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from January 1, 2006 to December 31, 2006.
- (c) On April 15, 2008, the Insurance Department issued a Market Conduct Examination Report to Respondent.

(d) A response to the Examination Report was provided by Respondent on May 15, 2008.

(e) The Examination Report notes violations of the following:

- (i) Section 641.1-A of Act 147 of 2002 prohibits any entity or the appointed agent of any entity from transacting the business of insurance through anyone acting without an insurance producer license (40 P.S. § 310.41a);
- (ii) Section 671-A of Act 147 of 2002 (40 P.S. § 310.71), which prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act;
- (iii) Section 404-A of the Insurance Company Law, No. 284 (40 P.S. §625-4), which requires when the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand-

delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence;

- (iv) Section 406-A of the Insurance Company Law, No. 284 (40 P.S. §625-6), which prohibits any alteration of any written application for a life insurance policy or annuity to be made by any person other than the applicant without the applicant's written consent;
- (v) Section 408-A(e)(2)(i) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states the following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen is displayed. The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form, the applicant shall acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery;
- (vi) Section 408-A(c)(4)(i) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which requires a statement to be signed and dated by the applicant or the policy owner in the case of an illustration provided at time of delivery, reading as follows: "I have received a copy of this illustration and

understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The producer has told me they are nonguaranteed.”

(vii) Section 408-A(c)(4)(ii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which requires a statement to be signed and dated by the producer reading as follows: “I certify that this illustration has been presented to the applicant or the policy owner and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration.”

(viii) Section 408-A(e)(1)(i) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states if the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant;

(ix) Section 408-A(e)(1)(ii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states if the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled

“Revised Illustration.” The statement shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered;

(x) Section 408-A(e)(5) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which requires a copy of the basic illustration and any revisions signed, with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force;

(xi) Section 410D(a)(3)(b)(1) of the Insurance Company Law, No. 284 (40 P.S. § 510c), which states except as provided in paragraphs (2) and (3), individual fixed dollar or pure endowment contracts shall not be entered into in the Commonwealth of Pennsylvania after January 1, 1982, unless they have prominently printed on the first page of such contract or attached thereto, a notice stating in substance that the contractholder shall be permitted to return the contract within at least 10 days of its delivery and to have the stipulated payment or premium paid refunded if after examination of the contract, the contractholder is not satisfied with it for any reason. If a contractholder pursuant to such notice, returns the contract to the insurer or agent through whom it was purchased, it shall be void from the beginning

and the parties shall be in the same position as if no contract had been entered into;

- (xii) Title 31, Pennsylvania Code, Section 51.5, requires a company to file an Annual Statement, with a Certificate of Compliance executed by an authorized officer of the company wherein it is stated that to the best of his knowledge, information and belief, the advertisements which were disseminated by the company during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws and regulations of the Commonwealth;
- (xiii) Title 31, Pennsylvania Code, Section 81.4(b)(1), which states that if replacement is involved, the agent or broker shall present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities;
- (xiv) Title 31, Pennsylvania Code, Section 81.5(b), which requires the insurer, as part of a completed application for life insurance or annuity, require a statement signed by the applicant regarding whether the proposed insurance or annuity will replace existing life insurance or annuity;
- (xv) Title 31, Pennsylvania Code, Section 81.6(a)(1), which requires an insurer that uses an agent or broker in a life insurance or annuity sale shall require

with or as part of a completed application for life insurance or annuity, a statement signed by the agent or broker regarding whether the broker knows replacement is or may be involved in the transaction;

- (xvi) Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii), which states an insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by Section 83.3, or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner;
- (xvii) Title 31, Pennsylvania Code, Section 81.6(c), which requires the replacing insurer to maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities;
- (xviii) Title 31, Pennsylvania Code, Section 83.3, which requires written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such;

- (xix) Title 31, Pennsylvania Code, Section 83.4a, which states the agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant;
- (xx) Title 31, Pennsylvania Code, Section 83.4b, which requires the insurer to maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute *prima facie* evidence that no disclosure statement was provided to the prospective purchaser of life insurance;
- (xxi) Title 31, Pennsylvania Code, Section 83.55, which states: (a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible; and (b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use;

- (xxii) Title 31, Pennsylvania Code, Sections 83.55a and 83.55b, which (a) require the agent to submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant; and (b) the insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance;
- (xxiii) Title 31, Pennsylvania Code, Section 83.55c, which states if it is the practice of the insurer to mail the policy directly to the applicant, the appropriate officer of the insurer shall certify, in conjunction with the annual statement of the insurer, that in accordance with this subchapter, surrender comparison index disclosures have been included with policies at delivery or provided earlier upon request. Failure to so certify shall constitute *prima facie* evidence that surrender comparison index disclosures have not been provided to prospective purchasers of life insurance;
- (xxiv) Title 31, Pennsylvania Code, Section 146.5, which states every insurer, upon receiving notification of a claim, shall within ten working days,

acknowledge the receipt of such notice, unless payment is made within such period. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated;

- (xxv) Title 31, Pennsylvania Code, Section 146.6 states that if an investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected; and
- (xvi) Title 31, Pennsylvania Code, Section 146.7, which requires within 15 working days after receipt by the insurer of properly executed proof of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department makes the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

- (b) Respondent's violations of Sections 641-A and 671-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
 - (iii) an order to cease and desist; and
 - (iv) any other conditions as the Commissioner deems appropriate.
- (c) Respondent's violations of Sections 404-A, 406-A, 408-A and 410D of the Insurance Company Law, No. 284 (40 P.S. §§625-4, 625-6, 625-8 and 510) are punishable by the following, under 40 P.S. § 625-10: Upon determination by hearing that this act has been violated, the commissioner may issue a cease and desist order, suspend, revoke or refuse to renew the license, or impose a civil penalty of not more than \$5,000 per violation.
- (d) Respondent's violations of Title 31, Pennsylvania Code, Chapter 81, are punishable under Title 31, Pennsylvania Code, Section 81.8(b) and (c), which provide failure to comply, after a hearing, may subject a company to penalties provided in 40 P.S. § 475. Failure to comply shall be considered a separate violation and may not be considered in lieu of a proceeding against the

company for a violation of 40 P.S. §§472, 473 or 474. In addition, failure to make the disclosure may be considered a violation of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 to 1171.15);

(e) Respondent's violations of Title 31, Pennsylvania Code, Chapter 83 are punishable under Title 31, Pennsylvania Code, Section 83.6:

(i) For failing to insure adequate disclosure of basic information, after a hearing, a company may be subject to the penalties provided under 40 P.S. § 475, for violations of 40 P.S. §§ 472 through 474. In

addition, failure to make the disclosure outlined in this subchapter may be considered a violation of 40 P.S. §§ 1171.1 through 1171.15.

(f) Respondent's violations of Title 31, Pennsylvania Code, Sections 51.5, 146.5, 146.6 and 146.7 are punishable under Section 9 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9):

- (i) cease and desist from engaging in the prohibited activity;
- (ii) suspension or revocation of the license(s) of Respondent.

(g) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 –

1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:

- (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);
- (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall file an affidavit stating under oath that it will provide each of its directors, at the next scheduled directors meeting, a copy of the adopted

Report and related Orders. Such affidavit shall be submitted within thirty (30) days of the date of this Order.

- (c) Respondent shall pay Fifty-Five Thousand Dollars (\$55,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.

- (d) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Ginny Marquart, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

6. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein may pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

7. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

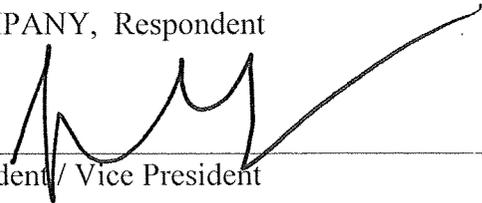
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law

contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

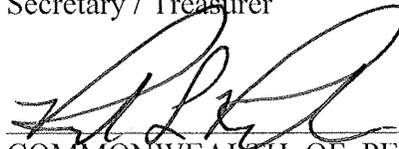
BY: OM FINANCIAL LIFE INSURANCE
COMPANY, Respondent



President / Vice President



Secretary / Treasurer



COMMONWEALTH OF PENNSYLVANIA

By: Randolph L. Rohrbaugh
Deputy Insurance Commissioner

I. INTRODUCTION

The Market Conduct Examination was conducted on OM Financial Life Insurance Company; hereafter referred to as "Company," at the Company's office located in Baltimore, Maryland, August 27, 2007, through November 2, 2007. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

Pennsylvania Market Conduct Examination Reports generally note only those items, to which the Department, after review, takes exception. A violation is any instance of Company activity that does not comply with an insurance statute or regulation. Violations contained in the Report may result in imposition of penalties. Generally, practices, procedures, or files that were reviewed by Department examiners during the course of an examination may not be referred to in the Report if no improprieties were noted. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was identified. This enables Company management to review these areas of concern in order to determine the potential impact upon Company operations or future compliance.

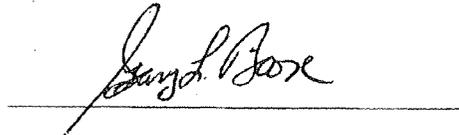
Throughout the course of the examination, Company officials were provided status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company officials to discuss the various types of violations identified during the examination and review written summaries provided on the violations found.

The courtesy and cooperation extended by the Officers and Employees of the Company during the course of the examination is acknowledged.

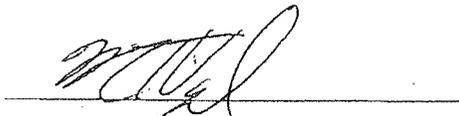
The undersigned participated in the Examination and in the preparation of this Report.



Daniel Stemcosky, AIE, FLMI
Market Conduct Division Chief



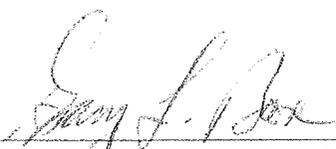
Gary L. Boose
Market Conduct Examiner



Michael T. Vogel
Market Conduct Examiner

Verification

Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).



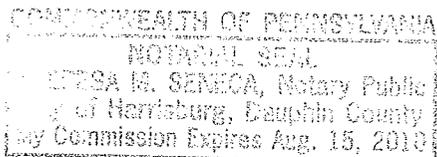
Gary L. Boose, Examiner in Charge

Sworn to and Subscribed Before me

This 11 Day of February, 2008



Notary Public



II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted pursuant to the authority granted by Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of January 1, 2006, through December 31, 2006, unless otherwise noted. The purpose of the examination was to determine compliance by the Company with Pennsylvania insurance laws and regulations.

The examination focused on the Company's operation in areas such as: Advertising, Consumer Complaints, Forms, Producer Licensing, Underwriting Practices and Procedures, Rating and Claim Handling Practices and Procedures.

The Company was requested to identify the universe of files for each segment of the review. Based on the universe sizes identified, random sampling was utilized to select the files reviewed for this examination.

During the course of the examination, for control purposes, some of the review segments identified in this Report may have been broken down into various sub-categories by line of insurance or Company administration. These specific sub-categories, if not reflected individually in the Report, would be included and grouped within the respective general categories of the Examination Report.

III. COMPANY HISTORY AND LICENSING

OM Financial Life Insurance Company, hereinafter referred to as “Company”, was incorporated in the State of Maryland on December 16, 1959. The Company received its certificate of authority to operate in the Commonwealth of Pennsylvania on May 19, 1960. The Company is authorized to do business in 49 states and the District of Columbia. The Company is not licensed in the State of New York, but operates there through its wholly-owned direct subsidiary OM Financial Life Insurance Company of New York.

Effective on January 2, 2007, the Company changed its name from “Fidelity and Guaranty Life Insurance Company” to “OM Financial Life Insurance Company”. The name change was made to bring the name of the Company in line with the overall branding strategy of the ultimate parent company, Old Mutual plc. The Company is now a direct wholly-owned subsidiary of Old Mutual U.S. Life Holdings, Inc., a Delaware corporation.

The Company offers a variety of life insurance and annuity products including indexed life and annuities and variable annuities.

As of their 2006, annual statement for Pennsylvania, the Company reported direct premium for life insurance in the amount of \$19,362,287; direct premium for annuity considerations in the amount of \$170,671,256 and direct premium for deposit-type contracts in the amount of \$3,350,656.

IV. ADVERTISING

Title 31, Pennsylvania Code, Section 51.2(c) provides that “Any advertisements, whether or not actually filed or required to be filed with the Department under the provisions of this Regulation may be reviewed at any time at the discretion of the Department.” The Department, in exercising its discretionary authority for reviewing advertising, requested the Company to provide copies of all advertising materials used for solicitation and sales during the experience period.

The Company was requested to provide a copy of the advertising certificate of compliance for the experience period. The Company did not provide the advertising certificate of compliance. The Company’s web site was reviewed to ascertain compliance with Act 205, Section 5 (40 P.S. §1171.5), Unfair Methods of Competition and Unfair or Deceptive Acts or Practices and Title 31, Pennsylvania Code, Chapter 51. The following violation was noted:

1 Violation – Title 31, Pennsylvania Code, Section 51.5, Certificate of compliance.

A company required to file an annual statement which is now or which hereafter becomes subject to this chapter shall file with the Department with its Annual Statement a Certificate of Compliance executed by an authorized officer of the company wherein it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by the company during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws and regulations of this Commonwealth.

The Company failed to file an advertising certificate of compliance.

V. FORMS

The Company was requested to provide a list and copies of all policy and/or member forms, conversion contracts, applications, riders, amendments and endorsements used during the experience period. The forms provided and forms reviewed in various underwriting sections of the exam were reviewed to ensure compliance with Insurance Company Law, Section 354 and Title 18, Pennsylvania Consolidated Statutes, Section 4117(k), Fraud notice. No violations were noted.

VI. PRODUCER LICENSING

The Company was requested to provide a list of all producers active and terminated during the experience period. Section 671-A (40 P.S. §310.71) of the Insurance Department Act prohibits producers from doing business on behalf of or as a representative of any entity without a written appointment from that entity. Section 641.1-A (40 P.S. §310.41a) of the Insurance Department Act prohibits a company from accepting insurance applications or securing any insurance business through anyone acting without a license. Section 671.1-A (40 P.S. §310.71a) of the Insurance Department Act requires the Company to report all producer terminations to the Department.

The Company provided a list of 1,089 active and terminated producers. A random sample of 100 producers was requested, received and reviewed. The list was compared to departmental records of producers to verify appointments, terminations and licensing. In addition, a comparison was made on producers identified on applications reviewed in the policy issued sections of the exam. The following violations were noted:

41 Violations – Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71)

(a) Representative of the insurer. – An insurance producer shall not act on behalf of or as a representative of the insurer unless the insurance producer is appointed by the insurer. An insurance producer not acting as a representative of an insurer is not required to be appointed.

- (b) *Representative of the consumer.* – An insurance producer acting on behalf of or representing an insurance consumer shall execute a written agreement with the insurance consumer prior to representing or acting on their behalf that:
- (1) *Delineates the services to be provided; and*
 - (2) *Provides full and complete disclosure of the fee to be paid to the insurance producer by the insurance consumer.*
- (c) *Notification to department.* – An insurer that appoints an insurance producer shall file with the department a notice of appointment. The notice shall state for which companies within the insurer’s holding company system or group the appointment is made.
- (d) *Termination of appointment.* – Once appointed, an insurance producer shall remain appointed by an insurer until such time as the insurer terminates the appointment in writing to the insurance producer or until the insurance producer’s license is suspended, revoked or otherwise terminated.
- (e) *Appointment fee.* – An appointment fee of \$12.50 will be billed annually to the insurer for each producer appointed by the insurer during the preceding calendar year regardless of the length of time the producer held the appointment with the insurer. The appointment fee may be modified by regulation.
- (f) *Reporting.* – An insurer shall, upon request, certify to the department the names of all licensees appointed by the insurer.

The Company reported the following eight (8) producers as active; however, Department records did not indicate their appointment during the experience period.

Producer
GAGLIARDI
GUERIERA
KNITTEL
HOOD
ROSANIA
BROWN
WINEBRENNER
FSC AGENCY

The following 33 individuals were listed as producers on applications reviewed in the policy issued sections of the exam. Department records do not identify these individuals as being appointed by the Company at the time of application.

Producer
LEHMER
VARI
LINGG
BURKE
VENTO
COCUZZA
EKERN
CARST
BLAND
NG
ANGELO
HARTRANFT
CLYMER
ABEL
GRESS
CHURA
JEFFERS
CHURA
ROBISON
DEITRICH
CHURA
RICHARDSON
IOVANNONE
SARAPPO
CVERCKO
WALL
MARZUCCO
VALEN
SONNESSA
MASSEY
BOPP
MILES
BARRASSE

3 Violations –Insurance Department Act, No. 147, Section 641.1-A (40 P.S.

§310.41a)

(a) Any insurance entity or licensee accepting applications or orders for insurance or securing any insurance business that was sold, solicited or negotiated by any person acting without an insurance producer license shall be subject to civil penalty of no more than \$5000 per violation in accordance with this act. This section shall not prohibit an insurer from accepting an insurance application directly from a consumer or prohibit the payment or receipt of referral fees in accordance with this act.

(b) A person that violates this section commits a misdemeanor of the third degree.

The following three (3) individuals were listed as producers for the Company; however, Department records do not identify the individual as holding a Pennsylvania insurance license during the time frame of this examination.

Producer
JENNINGS
LENKER
KUNKEL

VII. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of consumer complaint logs for 2002, 2003, 2004, and 2005. The Company reported 68 consumer complaints were received during the experience period. Of the 68 complaints identified, 10 were forwarded from the Department. A random sample of 25 complaint files was requested, received and reviewed. The Company provided complaint logs as requested. The Department's list of written consumer complaints that were forwarded to the Company during the experience period was compared to the Company's complaint log.

The complaint files and the 4 years of complaint logs were reviewed for compliance with the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). Section 5(a)(11) of the Act requires maintenance of a complete record of all complaints received during the preceding four (4) years. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaint and the time it took to process each complaint. Written complaint files involving claims were also reviewed for compliance with Title 31, Pennsylvania Code, Section 146.5(b) and 146.5(c), Unfair Claims Settlement Practices.

The following violations were noted:

7 Violations – Title 31, Pennsylvania Code, Section 146.5

(b) Every insurer, upon receipt of an inquiry from the Department respecting a claim shall, within 15 working days of receipt of the inquiry, furnish the Department with an adequate response to the inquiry.

(c) An appropriate reply shall be made within 10 working days on other pertinent communication from a claimant which reasonably suggest that a response is expected.

The Company did not reply in a timely manner to the claimant in five (5) claims noted and to the Department for the remaining two (2) claims noted.

VIII. UNDERWRITING

The Underwriting review was sorted and conducted in ten (10) general segments.

- A. Underwriting Guidelines
- B. Universal Life Certificates Issued
- C. Group Term Life Certificates Issued
- D. Group Annuity Certificates Issued
- E. Universal Life Policies Issued
- F. Term Life Policies Issued
- G. Universal Life Policies Issued as Replacements
- H. Individual Term Life Policies Issued as Replacements
- I. Annuity Contracts Issued as Replacements
- J. Individual Term Life Conversions

Each segment was reviewed for compliance with underwriting practices and included forms identification and producer identification. Issues relating to forms or licensing appear in those respective sections of the Report and are not duplicated in the Underwriting portion of the Report.

A. Underwriting Guidelines

The Company was requested to provide all underwriting guidelines and manuals utilized during the experience period. The guidelines and manuals received were reviewed to ensure that underwriting guidelines were in place and being followed in a uniform and consistent manner and that no underwriting practices or procedures were in place that could be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

The following guidelines were reviewed:

1. Underwriting Decline Process
2. Requirements – Special handling
 - A. Agent Notes
 - B. Illustrations or Certifications, Replacement Forms, Details to Answers or Unanswered Questions
 - C. Any Non-Routine Requirement
 - D. Telephone Interview
 - E. APS (Attending Physicians Statement)
 - F. Mail
 - G. Requesting ALC ((Blood Profile)
 - H. Medical Director
 - I. Finals
 - J. As Applied For
 - K. Other Than Applied for
 - L. Requests for withdrawing from the phone interview
 - M. Withdrawing an application

B. Universal Life Certificates Issued

The Company was requested to provide a list of all certificate holders enrolled during the experience period. The Company provided a list of 314 universal certificate holders issued. A random sample of 25 certificate holders enrolled was requested, received and reviewed. The files were reviewed to ensure compliance with Title 18, Pennsylvania Consolidated Statutes, Section 4117(k). No violations were noted.

C. Group Term Life Certificates Issued

The Company was requested to provide a list of all certificate holders enrolled during the experience period. The Company provided a list of 9,111 group term life certificate holders. A random sample of 25 certificate holders enrolled was requested, received and reviewed. The files were reviewed to ensure compliance with Title 18, Pennsylvania Consolidated Statutes, Section 4117(k). No violations were noted.

D. Group Annuity Certificates Issued

The Company was requested to provide a list of all certificate holders enrolled during the experience period. The Company provided a list of 2,960 group annuity certificate holders. A random sample of 25 certificate holders was requested, received and reviewed. The files were reviewed to ensure compliance with Title 18, Pennsylvania Consolidated Statutes, Section 4117(k). No violations were noted.

E. Universal Life Policies Issued

The Company was requested to provide a list of all life policies issued during the experience period. The Company identified a universe of 121 universal life policies issued. A random sample of 25 universal life policy issued files was requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

2 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by §83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

The replacement letter to the replaced company was not documented in the two (2) files noted.

4 Violations – Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A.

The four (4) files noted did not contain evidence that a written disclosure was provided.

10 Violations - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification

from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance.

Of the ten (10) files noted, eight (8) were missing the agent's certification on the disclosure and the remaining two (2) files were certified late.

1 Violation – Title 31, Pennsylvania Code, Section 83.55

(a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible.

(b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use.

The file noted did not include the Cost Surrender Comparison Index Disclosure.

8 Violations—Title 31, Pennsylvania Code, Sections 83.55a and 83.55b

a) The agent shall submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant.

b) The insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance.

The agent's certification of the surrender comparison index disclosure delivery was not evident in the eight (8) files noted.

6 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.

Verification of the date of policy delivery could not be established in the six (6) files noted.

1 Violation – Insurance Company Law, Section 408-A(c)(4)(i) (40 P.S. §625-8)

A statement to be signed and dated by the applicant or the policy owner in the case of an illustration provided at time of delivery, reading as follows: “I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The producer has told me they are nonguaranteed.”

The applicant’s signature and date on the illustration receipt was missing in the file noted.

1 Violation – Insurance Company Law, Section 408-A(c)(4)(ii) (40 P.S. §625-8)

A statement to be signed and dated by the producer reading as follows: “I certify that this illustration has been presented to the applicant or the policy owner and that I have

explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration.”

The writing agent’s signature and date on illustration receipt was missing in the file noted.

8 Violations – Insurance Company Law, Section 408-A(e)(1)(i) (40 P.S. §625-8)

The following applies if a basic illustration is used by a producer in the sale of a life insurance policy. If the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant.

The eight (8) files noted were missing a copy of the basic illustration or missing the required signature of the agent.

1 Violation– Insurance Company Law, Section 408-A(e)(1)(ii) (40 P.S. §625-8)

The following applies if a basic illustration is used by a producer in the sale of a life insurance policy. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled “Revised Illustration.” The statement required by subsection (c)(4) shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered.

The file noted did not contain a copy of the revised basic illustration.

3 Violations – Insurance Company Law, Section 408-A(e)(5) (40 P.S. §625-8)

A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force.

The three (3) files noted were missing the agent's certification and the applicants acknowledgment in regards to the illustration used.

1 Violation – Insurance Company Law, Section 410D(a)(3)(b)(1)

Except as provided in paragraphs (2) and (3), Individual fixed dollar or pure endowment (contract shall) contracts shall not be entered into in the Commonwealth of Pennsylvania (after January 1, 1982 unless it) unless they shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contractholder shall be permitted to return the contract within at least ten (10) days of its delivery and to have the stipulated payment or premium paid refunded if after examination of the contract, the contractholder is not satisfied with it for any reason. (If a contractholder pursuant to such notice, returns the contract to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no contract had been entered into.)

The file noted did not contain the required ten (10) day free look notice.

F. Term Life Policies Issued

The Company was requested to provide a list of all policies issued during the experience period. The Company provided a universe of four (4) term life policies issued. All four (4) policy files were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

G. Universal Life Policies Issued as Replacements

The Company identified a universe of 118 life policies issued as replacements during the experience period. A random sample of 50 universal life policies issued as replacements was requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

4 Violations- Title 31, Pennsylvania Code, Section 81.4(b)(1)

If replacement is involved, the agent or broker shall: present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities.

Of the four (4) files noted, three (3) were missing the replacement form and the remaining file the replacement form was dated after the application date.

1 Violation - Title 31, Pennsylvania Code, Section 81.5(b)

The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity.

The replacement question for the applicant was not answered on the application in the file noted.

1 Violation - Title 31, Pennsylvania Code, Section 81.6(a)(1)

An insurer that uses an agent or broker in a life insurance or annuity sale shall: Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction.

The agent's statement of replacement was missing in the file noted.

43 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

The replacement letter to the replaced company was not documented in the 43 files noted.

13 Violations – Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A.

The 13 files noted did not contain a disclosure form.

13 Violations - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance.

The 13 files noted did not contain a copy of the required agent's certification of disclosure.

11 Violations – Title 31, Pennsylvania Code, Section 83.55c

If it is the practice of the insurer to mail the policy directly to the applicant, the appropriate officer of the insurer shall certify, in conjunction with the annual statement of the insurer, that in accordance with this subchapter surrender comparison index disclosures have been included with policies at delivery or provided earlier upon request. Failure to so certify shall constitute prima facie evidence that surrender comparison index disclosures have not been provided to prospective purchasers of life insurance.

The 11 files noted indicated that delivery of the policies had been made by mail with no evidence of a certification of surrender comparisons index disclosure.

1 Violation - Insurance Company Law, Section 404-A (40 P.S. §625-4)

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.

Verification of the date of policy delivery could not be established in the file noted.

1 Violation – Insurance Company Law, Section 406-A (40 P.S. §625-6)

No alteration of any written application for a life insurance policy or annuity shall be made by any person other than the applicant without the applicant's written consent.

The file noted contained alterations without the applicants consent.

15 Violations – Insurance Company Law, Section 408-A(c)(4)(i) (40 P.S. §625-8)

A statement to be signed and dated by the applicant or the policy owner in the case of an illustration provided at time of delivery, reading as follows: “I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The producer has told me they are nonguaranteed.”

The applicant's acknowledgement of illustration receipt was not signed and dated in the 15 files noted.

15 Violations – Insurance Company Law, Section 408-A(c)(4)(ii) (40 P.S. §625-8)

A statement to be signed and dated by the producer reading as follows: “I certify that this illustration has been presented to the applicant or the policy owner and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration.”

The producer did not sign and date the certification of illustration in the 15 files noted.

17 Violations – Insurance Company Law, Section 408-A(e)(1)(i) (40 P.S. §625-8)

The following applies if a basic illustration is used by a producer in the sale of a life insurance policy. If the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant.

The producer certification and applicants acknowledgement of the illustration used was not signed and dated for submission in the 17 files noted.

7 Violations– Insurance Company Law, Section 408-A(e)(1)(ii) (40 P.S. §625-8)

If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled “Revised Illustration.” The statement required by subsection (c)(4) shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered.

The seven (7) files noted did not contain the “Revised Illustration” label as required.

32 Violations – Insurance Company Law, Section 408-A(e)(5) (40 P.S. §625-8)

A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force.

The 32 files noted were missing the agent certification and the applicants acknowledgment in regards to the illustration used.

H. Individual Term Life Policies Issued as Replacements

The Company was requested to provide a list of all policies issued as replacements. The Company identified a universe of 143 individual term life policies issued as replacements during the experience period. A random sampling of 50 individual term life policies issued as replacements was requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

5 Violations - Title 31, Pennsylvania Code, Section 81.4(b)(1)

If replacement is involved, the agent or broker shall: present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities.

The replacement form was not used in four (4) files and the replacement form was dated after the application date in the remaining file noted.

2 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(1)

An insurer that uses an agent or broker in a life insurance or annuity sale shall: Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction.

The agent's replacement question is not consistent with the insured's answer regarding replacement on the application in the two (2) files noted.

48 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

The replacement letter to the replaced company was not documented in the 48 files noted.

3 Violations - Title 31, Pennsylvania Code, Section 81.6(c)

The replacing insurer shall maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities.

The three (3) files noted did not contain a copy of the required notice of replacement.

2 Violations - Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A.

The two (2) files noted did not contain a disclosure form.

4 Violations - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance.

The disclosure form was dated after the application date in the four (4) files noted.

18 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.

Verification of the date of policy delivery could not be established in the 18 files noted.

6 Violations - Insurance Company Law, Section 406-A (40 P.S. §625-6)

No alteration of any written application for a life insurance policy or annuity shall be made by any person other than the applicant without the applicant's written consent.

The six (6) files noted contained alterations without the applicants consent.

I. Annuity Contracts Issued as Replacements

The Company was requested to provide a list of all annuity policies issued during the experience period. The Company identified a universe of 1,042 annuity policies issued as internal/external replacements, during the experience period. A random sampling of 100 replacement files was requested, received, and reviewed. The annuity files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

1 Violation - Title 31, Pennsylvania Code, Section 81.5(b)

The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity.

The applicant's replacement question was not answered on the application in the file noted.

3 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(1)

An insurer that uses an agent or broker in a life insurance or annuity sale shall:

Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction.

The agents question on replacement was not completed on the application in the 3 files noted.

99 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

The replacement letter to the replaced company was not documented in the 99 files noted.

1 Violation - Title 31, Pennsylvania Code, Section 81.6(c)

The replacing insurer shall maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities.

The file noted did not contain a copy of the required notice of replacement.

22 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the

insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.

The date of policy delivery could not be verified in the 22 files noted.

J. Individual Term Life Conversions

The Company was requested to provide a list of all term life conversion policies issued during the experience period. The Company provided a universe of four (4) individual term life conversions issued. All four (4) files were requested, received and reviewed. The files were reviewed to determine compliance to issuance and underwriting statutes and regulations. The following violations were noted:

2 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.

Verification of the date of policy delivery could not be established in the two (2) files noted.

IX. INTERNAL AUDIT AND COMPLIANCE PROCEDURES

The Company was requested to provide copies of their internal audit and compliance procedures. The audits and procedures were reviewed to ensure compliance with Insurance Company Law, Section 405-A (40 P.S. §625-5). Section 405-A provides for the establishment and maintenance of internal audit and compliance procedures, which provides for the evaluation of compliance with all statutes and regulations dealing with sales methods, advertising, and filing and approval requirements for life insurance and annuities. The procedures shall also provide for the following:

- (1) Periodic reviews of consumer complaints in order to determine patterns of improper practices.
- (2) Regular reporting to senior officers and the board of directors or an appropriate committee thereof with respect to any significant findings.
- (3) The establishment of lines of communication, control and responsibility over the dissemination of advertising and promotional materials, including illustrations and illustration explanations, with the requirement that such materials shall not be used without the approval by company employees whose compensation, other than generally applicable company bonus or incentive plans, is not directly linked to marketing or sales.

No violations were noted.

X. CLAIMS

The claims review consisted of a review of the Company's claim manuals and a review of the claim files. The Company was requested to provide copies of all procedural guidelines including all manuals, memorandums, directives and any correspondence or instructions used for processing claims during the experience period. The Company provided the following claim manuals:

1. Claims Guidelines
 - A. Divorce
 - B. Minors
2. Interest Guidelines for Pennsylvania
3. Policyholder Service and Complaints
4. Claims
 - A. Incontestable Claim Processing Flow Chart
 - B. Contestable Claim Processing Flow Chart

The claim manuals and procedures were reviewed for any inconsistencies, which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. No violations were noted.

The claim file review consisted of five (5) areas:

- A. Group Disability Claims
- B. Group Life Claims
- C. Individual Life Claims
- D. Individual Disability Claims
- E. Individual Premium Waiver Claims

All claim files sampled were reviewed for compliance with requirements of the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171) and Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices. The life claims were additionally reviewed for compliance with Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b).

A. Group Disability Claims

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 32 group disability claims. A random sample of 10 claims was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violations were noted:

8 Violations - Title 31, Pennsylvania Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.

The Company failed to provide a timely status letter for the eight (8) claims noted.

6 Violations - Title 31, Pennsylvania Code, Section 146.7

Within 15 working days after receipt by the insurer of properly executed proofs of loss, the insurer shall advise the first-party claimant of the acceptance or denial of the claim.

The Company failed to provide notice of acceptance or denial within 15 working days for the 6 claims noted.

B. Group Life Claims

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 38 group life claims. A random sample of 25 group life claims was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). The following violations were noted:

1 Violation - Title 31, Pennsylvania Code, Section 146.5

Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.

The Company failed to acknowledge the claim within ten (10) working days.

6 Violations - Title 31, Pennsylvania Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.

The Company failed to provide timely status letters for the six (6) claims noted.

4 Violations - Title 31, Pennsylvania Code, Section 146.7

Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer.

The Company failed to provide notice of acceptance or denial within 15 working days for the 4 claims noted.

C. Individual Life Claims

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 81 individual life claims received. A random sample of 25 individual life claims were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). The following violations were noted:

1 Violation - Title 31, Pennsylvania Code, Section 146.5

Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.

The Company failed to acknowledge the claim within ten (10) working days.

4 Violations - Title 31, Pennsylvania Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.

The Company failed to provide timely status letters for the 4 claims noted.

D. Individual Disability Claims

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of eight (8) individual disability claims. All the claims were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violations were noted:

2 Violations - Title 31, Pennsylvania Code, Section 146.5

Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.

The Company failed to acknowledge a claim within ten (10) working days for the two (2) claims noted.

2 Violations - Title 31, Pennsylvania Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.

The Company failed to provide timely status letters for the two (2) claims noted.

E. Individual Premium Waiver Claims

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of four (4) individual premium waiver claims. All four claims were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violations were noted:

1 Violation - Title 31, Pennsylvania Code, Section 146.5

Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.

The Company failed to acknowledge the claim within ten (10) working days.

3 Violations - Title 31, Pennsylvania Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.

The Company failed to provide timely status letters for the three (3) claims noted.

2 Violations - Title 31, Pennsylvania Code, Section 146.7

Within 15 working days after receipt by the insurer of properly executed proofs of loss, the insurer shall advise the first-party claimant of the acceptance or denial of the claim.

The Company failed to provide notice of acceptance or denial within 15 working days for the 2 claims noted.

XI. RECOMMENDATIONS

The recommendations made below identify corrective measures the Department finds necessary as a result of the number of some violations, or the nature and severity of other violations, noted in the Report.

1. The Company must implement procedures to ensure advertising certification requirements of Title 31, Pennsylvania Code, Chapter 51.
2. The Company must review and revise Licensing procedures to ensure compliance with Sections 641.1-A, Section 671-A of the Insurance Department Act of 1921 (40 P.S. §§310.41a, 310.71).
3. The Company must review and revise internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.
4. The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Section 81.
5. The Company must review internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.
6. The Company must implement procedures to ensure compliance with the policy delivery receipt requirements of Section 404-A of the Insurance Company Law of 1921 (40 P.S. §625-4).
7. The Company must review internal control procedures to ensure compliance with illustration certification and delivery requirements of Section 408-A of the Insurance Company Law of 1921 (40 P.S. §625-8).
8. The Company must review internal control procedures to ensure compliance with Section 410D of the Insurance Company Law of 1921 (40 P.S. §510c) pertaining to the “Free Look” provision requirements for life insurance and endowment insurance.

9. The Company must review internal control procedures to ensure compliance with application alteration requirements of Section 406-A of the Insurance Company Law of 1921 (40 P.S. §625-6).

XII. COMPANY RESPONSE



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OM FINANCIAL LIFE INSURANCE COMPANY
OM FINANCIAL LIFE INSURANCE COMPANY OF NEW YORK

May 14, 2008

Daniel A. Stemcosky, AIE, FLMI
Market Conduct Division Chief
Insurance Department
Bureau of Enforcement
1321 Strawberry Square
Harrisburg, PA 17120

**Re: Market Conduct Examination of OM Financial Life
Insurance Company
f/k/a Fidelity and Guaranty Life Insurance Company
Response to Initial Draft Final Report
Examination Warrant Number: 07-M24-025**

Dear Mr. Stemcosky:

OM Financial Life Insurance Company (hereinafter "OMFLIC") respectfully submits the enclosed responses to the recommendations outlined in the Insurance Department's Final Report for the company's Market Conduct Examination covering the period January 1, 2006 through December 31, 2006.

OMFLIC's overall goal is to take the valuable information obtained during the examination and enhance our existing practices and procedures to ensure continued compliance with all applicable state laws and regulations. To that extent, we would like to thank each individual examiner for the consideration extended to us throughout the examination.

Please do not hesitate to contact me at (410) 895-0237 or Gequeta Valentine at (410) 895-1073 if we can be of further assistance in concluding this examination.

Sincerely,

Emarie Payne

Vice President and Chief Compliance Officer

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OM FINANCIAL LIFE INSURANCE COMPANY (OMFLIC)

MARKET CONDUCT EXAMINATION RESPONSES

PERIOD: JANUARY 1, 2006 – DECEMBER 31, 2006

1. **Insurance Department Recommendation**

The Company must implement procedures to ensure advertising certification requirements of Title 31, Pennsylvania Code, Chapter 51.

OMFLIC Response:

The Company's failure to file its annual Certificate of Compliance during the specified period was a one-time procedural error. At the time, employees responsible for the filing were relying on an NAIC checklist that as interpreted did not indicate the filing of the certificate as a state requirement. The Company's annual state filing procedures have been subsequently updated to include Pennsylvania as a required state.

2. **Insurance Department Recommendation**

The Company must review and revise Licensing procedures to ensure compliance with Sections 641.1-A, Section 671-A of the Insurance Department Act of 1921 (40 P.S. 310.41a, 310.71).

OMFLIC Response:

The Company is currently reviewing its agent appointment procedures and will update them accordingly to ensure that agents are actively appointed at the time of application. Within 90 days from the date of the Department's Final Report, the Company will send a follow-up letter, including documentation of the revised procedures.

3. **Insurance Department Recommendation**

The Company must review and revise internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.

OMFLIC Response:

While the examiners were still onsite, the Company's claims handling procedures were reviewed and revised to ensure that acknowledgment letters to claimants are sent within the established timeframes as required by the Insurance Code. Confirmation of the procedural change was communicated to the Department via an addendum to the initial summaries submitted and a teleconference with the examiners and the Company's Assistant Vice President of Claims.

4. **Insurance Department Recommendation**

The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Section 81.

OMFLIC Response:

The Company's current replacement procedures contain an appropriate system for ensuring that completed applications and replacement notices are received prior to the processing of new business applications. As necessary, additional internal training will be conducted to ensure replacement procedures are adhered to. In addition, as part of its compliance procedures, the Company regularly monitors replacement procedures by conducting monthly audits of randomly selected files.

Lastly, the Company is in the process of revising its replacement letter to existing insurers which will be sent to the Department within 90 days from the date of the Department's Final Report.

5. **Insurance Department Recommendation**

The Company must review and revise internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Section 83.

OMFLIC Response:

The Company is currently reviewing its new business procedures and will update them accordingly to ensure that the appropriate disclosures are provided at the time of application. Within 90 days from the date of the Department's Final Report, the Company will send a follow-up letter, including documentation of the revised procedures.

6. **Insurance Department Recommendation**

The Company must implement procedures to ensure compliance with the policy delivery receipt requirements of Section 404-A of the Insurance Company Law of 1921 (40 P.S. 625-4).

OMFLIC Response:

The Company's current new business procedures contain an appropriate system for ensuring that policy delivery receipts are received prior to policy issuance. In October 2007, the Company issued a Compliance Bulletin to its agents informing them that applications received without a signed delivery receipt for Pennsylvania business would not be processed.

In addition, as part of its compliance procedures, the Company regularly monitors that delivery receipts are submitted by conducting monthly audits of randomly selected files.

7. **Insurance Department Recommendation**

The Company must review and revise internal control procedures to ensure compliance with illustration certification and delivery requirement of Section 408-A of the Insurance Company Law of 1921 (40 P.S. 625-8)

OMFLIC Response:

The Company is currently reviewing its new business procedures and illustration software configurations and will update and/or upgrade them accordingly to ensure that certification and delivery requirements are met. Within 90 days from the date of the Department's Final Report, the Company will send a follow-up letter, including documentation of the revised procedures and/or system specifications.

8. **Insurance Department Recommendation**

The Company must review and revise internal control procedures to ensure compliance with Section 410D of the Insurance Company Law of 1921 (40 P.S. 510c) pertaining to the “free look” provision requirements for life insurance and endowment insurance.

OMFLIC Response:

The Company wishes to respectfully note that the recommendation for this item refers to one (1) violation for the “free look” requirement. As this item involves a number that is less than 10%, it is the Company’s position that this does not represent a deviation from established NAIC Market Conduct Handbook guidelines. Although no specific change is being made at this time, the Company will however take appropriate steps to minimize a recurrence of this in the future.

9. **Insurance Department Recommendation**

The Company must review and revise internal control procedures to ensure compliance with application alteration requirements of Section 406-A of the Insurance Company Law of 1921 (40 P.S. 625-6).

OMFLIC Response:

The Company is currently reviewing its new business procedures and will update them accordingly to ensure that application alteration requirements are met. Within 90 days from the date of the Department’s Final Report, the Company will send a follow-up letter, including documentation of the revised procedures.