STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

OM FINANCIAL LIFE INSURANCE COMPANY OF NEW YORK

CONDITION: DECEMBER 31, 2006

DATE OF REPORT: AUGUST 31, 2007

<u>STATE OF NEW YORK INSURANCE DEPARTMENT</u>

<u>REPORT ON EXAMINATION</u>

<u>OF THE</u>

<u>OM FINANCIAL LIFE INSURANCE COMPANY OF NEW YORK</u>

<u>AS OF</u>

<u>DECEMBER 31, 2006</u>

<u>DATE OF REPORT</u>:	<u>AUGUST 31, 2007</u>
<u>EXAMINER</u>:	<u>PHARES CATON</u>

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

Eliot Spitzer
Governor

Eric Dinallo
Superintendent

December 1, 2008

Honorable Eric Dinallo
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22555, dated October 30, 2006 and annexed hereto, an examination has been made into the condition and affairs of OM Financial Life Insurance Company of New York, formerly known as the Fidelity and Guaranty Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 2500 Westchester Avenue, Purchase, New York, 10577.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2006 filed annual statement. (See item 5 of this report)

The Company violated Section 1202(b)(2) of the New York Insurance Law when it failed to establish a committee comprised solely of directors who are not officers or employees of the Company or of any entity controlling or under common control with the Company, and also when it failed to have an independent committee evaluate the performance or recommend the compensation of the officers deemed by the such committee to be principal officers. (See item 3C of this report)

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 when it did not furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract, and the completed Disclosure Statement within ten days of the receipt of the application. (See item 6A of this report)

The Company violated Section 219.4(e) of Department Regulation No. 34-A when it used the words "free" and "no additional premium" with respect to the accidental death benefit which is available as part of the policy being advertised. (See item 6C of this report)

The Company violated Section 216.4(b) of Department Regulation No. 64 when it did not respond within 15 days to pertinent communication from its policyholders. (See item 6C of this report)

The Company violated Section 216.6(c) of Department Regulation No. 64 when it did not communicate its acceptance or rejection of annuity and universal life death claims within 15 days of receipt of the claim. (See item 6C of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2002. This examination covers the period from January 1, 2003 through December 31, 2006. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2006 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2006 to determine whether the Company's 2006 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

Company history
Management and control
Corporate records
Territory and plan of operation
Market conduct activities
Growth of Company
Mortality and loss experience
Reinsurance
Accounts and records
Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to the violations and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 7 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of New York on January 23, 1962, under the name of General Economics Life Insurance Company of New York. The Company was licensed and commenced business on November 26, 1962. The Company changed its name to Thomas Jefferson Life Insurance Company on January 21, 1965. The Company changed its name to Fidelity and Guaranty Life Insurance Company of New York on March 28, 2002. The Company's current name was adopted on January 1, 2007. Initial resources of $300,000 were provided through the sale of 60,000 shares of common stock (with a par value of $2 each) for $5 per share.

In August 1969, the Company became a wholly owned subsidiary of Fidelity and Guaranty Life Insurance Company ("F&G Life"), which in turn was wholly owned by United States Fidelity and Guaranty Company, hereinafter referred to as USF&G, an underwriter of multiple lines of property and casualty insurance.

On October 1, 1981, USF&G became a subsidiary of United States Fidelity and Guaranty Corporation, hereinafter referred to as USF&G Corporation, a newly formed holding company.

On January 19, 1998, The St. Paul Companies, Inc. and USF&G Corporation entered into an agreement and plan of merger whereby The St. Paul Companies, Inc. acquired USF&G Corporation through a stock exchange in which each share of USF&G Corporation stock was converted into 0.2821 of a share of The St. Paul Companies, Inc. stock.

On September 28, 2001, F&G Life and its subsidiaries were purchased by Old Mutual U.S. Life Holdings, Inc. ("OMUSLH"), a wholly owned subsidiary of Old Mutual U.S. Holdings, Inc. ("OMUSH"), which in turn is a wholly owned subsidiary of Old Mutual plc of London, England ("OM").

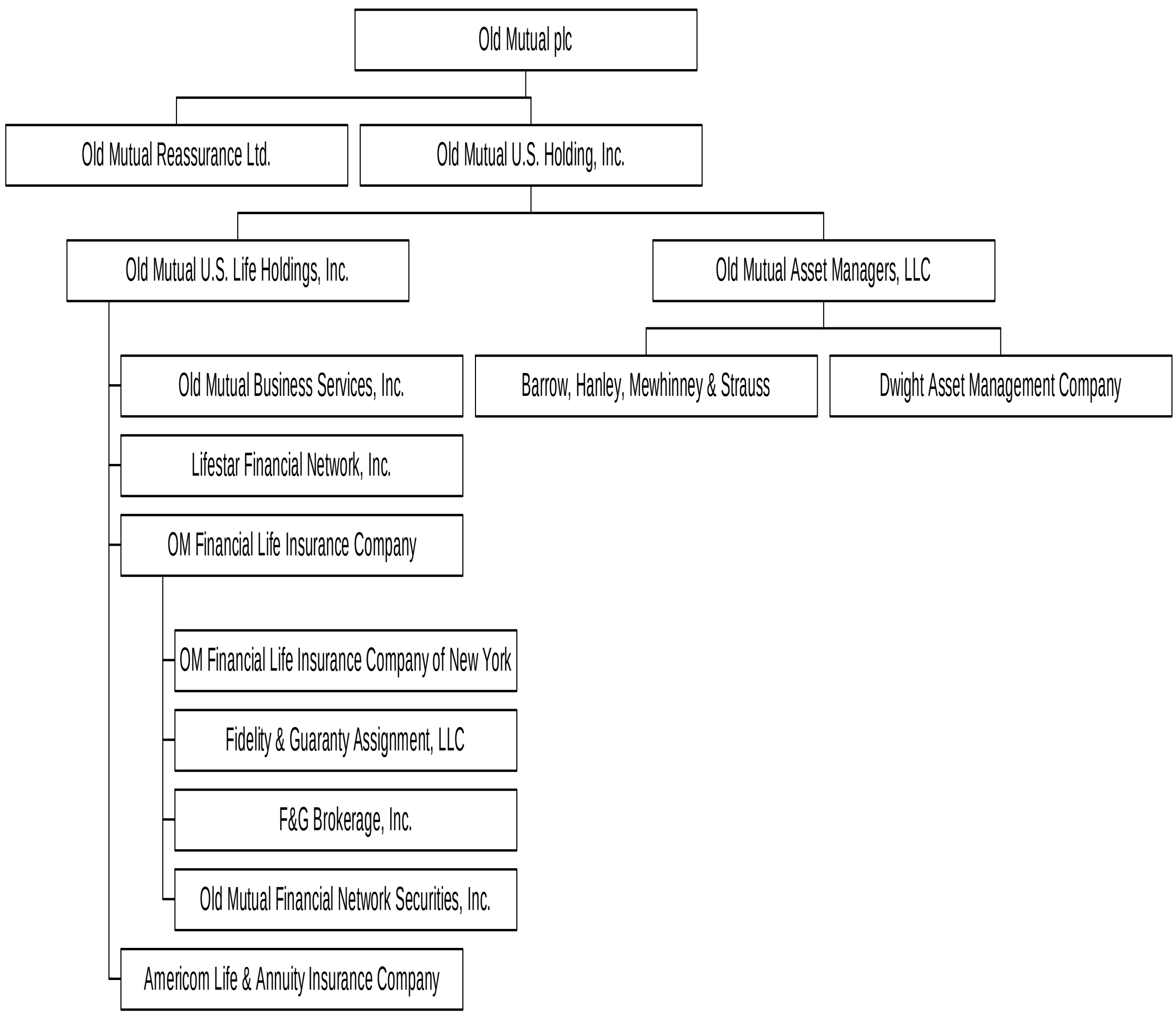
The Company received a surplus contribution of $15 million from its parent, F&G Life, prior to the acquisition by OM.

As of December 31, 2006, capital and paid-in and contributed surplus were $440,000 and $26,241,340, respectively.

B. Holding Company

The Company is a wholly owned subsidiary of OMFLIC (formerly F&G Life), a Maryland domiciled life insurance company. OMFLIC is in turn a wholly owned subsidiary of OMUSLH, a Delaware holding company. The ultimate parent of the Company is OM, an international financial services group.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2006 follows:



The Company had 3 service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination	
Investment Management Agreement 29905	July 1, 2002	Dwight Asset Management Company	The Company	Investment Management and Advisory Services	2003 2004 2005 2006	(633,890) (528,392) (286,112) (19,959)
Investment Management Agreement 33632	June 1, 2005	Barrow, Hanley, Mewhinney and Strauss	The Company	Investment Management and Advisory Services	2003 2004 2005 2006	0.00 0.00 (246,376) (577,545)
Management Services Agreement 29826 and 29826A)	November 1, 2001 and Amendment dated May 1, 2003	Old Mutual Business Services, Inc.	The Company	Administrative support services	2003 2004 2005 2006	(1,967,393) (3,543,669) (3,296,136) (2,961,197)

* Amount of Income or (Expense) Incurred by the Company

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than twenty directors. Directors are elected for a period of 1 year at the annual meeting of the stockholders held in May of each year. As of December 31, 2006, the board of directors consisted of nine members.

Section 1202(b)(2) of the New York Insurance Law states in part:

> "The board of directors of a domestic life insurance company shall establish one or more committees comprised solely of directors who are not officers or employees of the company or of any entity controlling, controlled by, or under common control with the company and who are not beneficial owners of a

> controlling interest in the voting stock of the company or any such entity. Such committee or committees shall have responsibility for . . . evaluating the performance of officers deemed by such committee or committees to be principal officers of the company and recommending to the board of directors the selection and compensation of such principal officers . . . "

The Company's Audit and Advisory Committee, herein after referred to as the "Committee", is responsible for, reviewing the Company's financial condition, recommending the selection of independent certified public accountants and nominating candidates to serve as directors. The Committee, however, was not comprised solely of independent directors. Thomas J. White a member of the Committee, is the Executive Vice President of an affiliate, Dwight Asset Management Company. Also, there was no record in the minutes of the Committee to indicate that the Committee evaluated the performance or recommended the compensation of the officers deemed by the Committee to be principal officers.

The Company violated Section 1202(b)(2) of the New York Insurance Law when it failed to establish a committee comprised solely of directors who are not officers or employees of the Company or of any entity controlling or under common control with the Company, and also when it failed to have an independent committee evaluate the performance and recommend the compensation of the Company's principal officers.

The nine board members and their principal business affiliation, as of December 31, 2006, were as follows:

Name and Residence	Principal Business Affiliation	Year First Elected
John P. Clifford Annapolis, MD	Executive Vice President OM Financial Life Insurance Company	2001
Alan M. Harrington Marietta, GA	President and Chief Executive Officer OM Financial Life Insurance Company of New York	2006
Robert W. Hock New York, NY	President NestEgg Builders	2003
John A. Knutson* Brooklin, ME	Retired	2001
James R. Morrison, III* Wentzville, MO	Retired	2005
Elizabeth S. Motyl* Skaneateles, NY	Retired	2006
Bruce G. Parker, Jr. Alpharetta, GA	Chairman of the Board OM Financial Life Insurance Company of New York	2003
Rose I. Piedmont Timonium, MD	Vice President and Chief Financial Officer OM Financial Life Insurance Company of New York	2006
Thomas J. White White Plains, NY	Executive Vice President Dwight Asset Management Company	2001

* Not affiliated with the Company or any other company in the holding company system

The examiner’s review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Company as of December 31, 2006:

Name	Title
Alan M. Harrington	President and Chief Executive Officer
Victor Lumby	Senior Vice President and Chief Operating Officer
Michael A. McGrath	Senior Vice President and General Counsel
Rose I. Piedmont	Vice President and Chief Financial Officer
Benjamin G. Spurgeon	Vice President and Appointed Actuary
Glen Jones*	Assistant Vice President

* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

D. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is only licensed to transact business in New York. In 2006, 100% of life premiums, annuity considerations and deposit type funds were received from New York. Policies are written on a non-participating basis. The Company writes individual life and annuity products through independent agents, managing general agents and specialty brokers. According to the Company, the decreases in issued annuities were due to a shift in the marketplace away from fixed traditional annuities to fixed indexed annuities. The Company's first fixed indexed annuity was introduced in 2006. For the years ended December 2003, 2004, 2005 and 2006, annuity products accounted for 95%, 90%, 77% and 92%, respectively, of the Company's premium income.

The Company's agency operations are conducted on a general agency basis.

E. Reinsurance

As of December 31, 2006, the Company had reinsurance treaties in effect with 7 companies, of which 6 were authorized or accredited. The Company's life business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is $100,000. The total face amount of life insurance ceded as of December 31, 2006, was $508,916,007, which represents 53% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies totaling $133,727 was supported by funds withheld of $540,000.

4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth (decline) during the period under review:

	December 31, 2002	December 31, 2006	Increase (Decrease)
Admitted assets	$476,483,662	$487,639,024	$11,155,362
Liabilities	$442,009,010	$454,567,212	$12,558,202
Common capital stock	$ 440,000	$ 440,000	$ 0
Gross paid in and contributed surplus	26,241,340	26,241,340	0
Unassigned funds (surplus)	7,793,312	6,390,472	(1,402,840)
Total capital and surplus	$ 34,474,652	$ 33,071,812	$ (1,402,840)
Total liabilities, capital and surplus	$476,483,662	$487,639,024	$11,155,362

The Company's invested assets as of December 31, 2006, were mainly comprised of bonds (88.2%) and preferred stocks (9%).

The majority (94.9%) of the Company's bond portfolio, as of December 31, 2006, was comprised of investment grade obligations.

The following indicates, for each of the years listed below, the amount of life insurance issued and in force by type (in thousands of dollars):

	Individual Whole Life		Individual Term	
Year	Issued	In Force	Issued	In Force
2003	$1,450	$252,319	$ 98,611	$229,481
2004	$1,163	$282,148	$189,268	$297,029
2005	$1,550	$291,523	$226,807	$467,543
2006	$ 1	$257,045	$235,014	$705,765

The individual whole life issues decreased in 2006, due to an increase in premium rates which made the product more expensive than its competitor's.

The ordinary lapse ratio for each of the examination years was 17.7% in 2003, 18% in 2004, 7.8% in 2005 and 10.2% in 2006.

The following has been extracted from the Exhibits of Annuities in the filed annual statements for each of the years under review:

	Ordinary Annuities			
	2003	2004	2005	2006
Outstanding, end of previous year	8,889	9,349	9,343	8,876
Issued during the year	711	227	87	511
Other net changes during the year	(251)	(233)	(554)	(1,254)
Outstanding, end of current year	9,349	9,343	8,876	8,133

According to the Company, the decreases in issued annuities were due to a shift in the marketplace away from fixed traditional annuities to fixed indexed annuities. The Company's first fixed indexed annuity was introduced in 2006.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	2003	2004	2005	2006
Ordinary:				
Life insurance	$(185,951)	$(1,340,662)	$ (55,125)	$(3,862,741)
Individual annuities	412,078	3,366,308	5,084,775	546,093
Supplementary contracts	(47,033)	1,431	(92,399)	121,872
Total ordinary	$ 179,094	$ 2,027,077	$4,937,251	$(3,194,776)
Group Life:	$ 3,402	$ 2,706	$ 6,766	$ 7,549
Total	$ 182,496	$ 2,029,783	$4,944,017	$(3,187,227)

The fluctuation noted in the ordinary life insurance business between 2005 and 2006 was due to a strengthening of the Company's reserves and an increase in the general expenses.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2006, as contained in the Company's 2006 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2006 filed annual statement.

A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2006

Admitted Assets

Bonds	$422,744,133
Preferred stocks	43,187,364
Cash, cash equivalents and short term investments	4,437,253
Contract loans	2,320,217
Other invested assets	6,459,445
Receivable for securities	370,436
Investment income due and accrued	6,367,230
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	(109,199)
Deferred premiums, agents' balances and installments booked but deferred and not yet due	667,602
Reinsurance:	
Amounts recoverable from reinsurers	100,000
Net deferred tax asset	441,749
Receivables from parent, subsidiaries and affiliates	652,794
Total admitted assets	$487,639,024

Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	$395,465,906
Liability for deposit-type contracts	40,115,060
Contract claims:	
Life	237,249
Policyholders' dividends and coupons due and unpaid	1,006
Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts:	
Dividends apportioned for payment	3,163
Dividends not yet apportioned	8,077
Premiums and annuity considerations for life and accident and health contracts received in advance	7,217
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	302,077
Interest maintenance reserve	10,151,393
Commissions to agents due or accrued	28,044
General expenses due or accrued	143,300
Taxes, licenses and fees due or accrued, excluding federal income taxes	130,800
Current federal and foreign income taxes	294,139
Amounts withheld or retained by company as agent or trustee	23,638
Remittances and items not allocated	2,564,880
Miscellaneous liabilities:	
Asset valuation reserve	2,917,635
Reinsurance in unauthorized companies	0
Funds held under reinsurance treaties with unauthorized reinsurers	540,000
Payable to parent, subsidiaries and affiliates	1,373,804
Retained asset account	163,740
Unpresented drafts pending escheatment	96,084
Total liabilities	$454,567,212
Common capital stock	$ 440,000
Gross paid in and contributed surplus	26,241,340
Unassigned funds (surplus)	6,390,472
Surplus	$ 32,631,812
Total capital and surplus	$ 33,071,812
Total liabilities, capital and surplus	$487,639,024

B. CONDENSED SUMMARY OF OPERATIONS

	2003	2004	2005	2006
Premiums and considerations	$47,527,233	$19,069,686	$12,343,147	$36,337,276
Investment income	29,673,767	32,771,086	31,980,057	30,444,344
Commissions and reserve adjustments on reinsurance ceded	144,733	176,302	348,794	320,198
Miscellaneous income	240	175	514,379	330,612
Total income	$77,345,973	$52,017,249	$45,186,377	$67,432,430
Benefit payments	$32,854,297	$41,628,138	$42,902,459	$74,881,551
Increase in reserves	41,026,530	4,249,221	(9,217,879)	(11,007,599)
Commissions	2,520,826	1,408,679	1,308,283	2,885,697
General expenses and taxes	3,649,462	4,805,366	4,254,826	3,699,294
Increase in loading on deferred and uncollected premiums	(1,077)	64,502	161,266	99,246
Miscellaneous deductions	(2,898,674)	(2,179,849)	821,970	48,696
Total deductions	$77,151,364	$49,976,057	$40,230,925	$70,606,885
Net gain (loss)	$ 194,609	$ 2,041,192	$ 4,955,452	$ (3,174,455)
Dividends	12,113	11,409	11,435	12,772
Federal and foreign income taxes incurred	(586,886)	13,398	827,760	95,658
Net gain (loss) from operations before net realized capital gains	$ 769,382	$ 2,016,385	$ 4,116,257	$ (3,282,885)
Net realized capital gains (losses)	(1,876,549)	352,191	(358,296)	61,507
Net income	$(1,107,167)	$ 2,368,576	$ 3,757,961	$ (3,221,378)

C. CAPITAL AND SURPLUS ACCOUNT

	2003	2004	2005	2006
Capital and surplus, December 31, prior year	$34,474,652	$32,583,966	$33,107,140	$36,808,526
Net income	$ (1,107,167)	$ 2,368,576	$ 3,757,961	$ (3,221,378)
Change in net unrealized capital gains (losses)	433	13,802	1,181	0
Change in net deferred income tax	(122,667)	(70,891)	(447,452)	1,676,858
Change in non-admitted assets and related items	6,140	(198,734)	431,234	(1,615,431)
Change in liability for reinsurance in unauthorized companies	0	0	(50,287)	50,287
Change in reserve valuation basis	(820,656)	0	0	0
Change in asset valuation reserve	153,231	(1,589,579)	(330,556)	(627,050)
Aggregate write ins for gains and losses in surplus:				
Prior year reserve adjustment	0	0	339,305	0
Net change in capital and surplus for the year	$ (1,890,686)	$ 523,174	$ 3,701,386	$ (3,736,714)
Capital and surplus, December 31, current year	$32,583,966	$33,107,140	$36,808,526	$33,071,812

6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company’s market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company’s advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

Section 219.4(e) of Department Regulation No. 34-A states, in part:

> "The words free, no cost, without cost, no additional cost, at no extra cost, without additional cost, or words of similar import, may not be used with respect to any benefit or service being made available with the policy . . . "

The Company’s advertisements used the words "free" and "at no additional premium" with respect to the accidental death benefit being made available as part of the Company’s level term HomeCertain policy.

The Company violated Section 219.4(e) of Department Regulation No. 34-A by using the words "free" and “no additional premium” with respect to the accidental death benefit which is available as part of the policy being advertised.

Section 51.6(b) of Department Regulation No. 60 states, in part:

> “Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall:
>
> (4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed "Disclosure Statement;"

Section 243.2(b) of Department Regulation No. 152 states, in part:

> "Except as otherwise required by law or regulation, an insurer shall maintain: (1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer . . . "

A review of a sample of 83 replacement files revealed the following:

1) The Company is required to communicate with the replaced company during the replacement process. The Company is required to request the necessary information to complete the disclosure statement as required by Section 51.5(c)(2) of Department Regulation No. 60. If the replaced company does not respond in the prescribed time, the Company may then use good faith approximations to complete the disclosure statement (such must be indicated on the disclosure statement). After the disclosure statement is completed and the application has been signed and received by the Company, the Company is to notify the company being replaced that its annuity contract is about to be replaced, giving the replaced company an opportunity to conserve its business. The notification is performed by providing the replaced company with the notification letter, a copy of the completed "Disclosure Statement" along with the sales material the Company used in the sale of the proposed annuity contract.

The Company did not maintain any evidence that it presented the replaced company with the completed "Disclosure Statement" along with the sales material used in the sale of the annuity sample reviewed.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 when it did not furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed "Disclosure Statement" within ten days of the receipt of the application.

2) In 5 cases, the Company did not retain a copy of the proper authorization from the applicant and the request to the replaced insurer for the information necessary to complete the Disclosure Statement. There is no evidence that the Company's agents notified the insurer whose contract is being replaced of the potential replacement.

The Company violated Section 243.2(b)(1) of Department Regulation No. 152 when it did not maintain proof of its communication with the replaced company.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

Based upon the sample reviewed, no significant findings were noted.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Section 216.4(e) of Department Regulation No. 64 states:

> "As part of its complaint handling function, an insurer's consumer services department shall maintain an ongoing central log to register and monitor all complaint activity."

The Company's complaint log did not include 11 complaints that were recorded by the Department.

The Company violated Section 216.4(e) of Department Regulation No. 64 by not maintaining a complaint log that registers and monitors all the Company's complaint activity.

Section 216.4(b) of Department Regulation No. 64 states:

> "An appropriate reply shall be made within 15 days on all other pertinent communication."

In approximately one third of the 29 complaint files reviewed, the complaint was that the Company was not responsive to policyholder requests for information relating to their policies. After months of no response from the Company, the policyholders resorted to filing complaints with the Department in order to seek a response from the Company and possibly a resolution to their complaints.

The Company violated Section 216.4(b) of Department Regulation No. 64 when it did not respond within 15 days to pertinent communication from its policyholders.

Section 216.6(c) of Department Regulation No. 64 states, in part:

> "Within 15 business days after receipt by the insurer of a properly executed proof of loss and/or receipt of all items, statements and forms which the insurer requested from the claimant, the claimant, or the claimant's authorized representative, shall be advised in writing of the acceptance or rejection of the claim by the insurer."

The examiner reviewed a sample of 44 annuity death claim files and 48 universal life death claims files. The Company did not respond to claimants as required by the above captioned regulation in twelve of the files reviewed. There was no information, in the files provided, that could be used to explain the delay in follow-up communication from the Company.

The Company violated Section 216.6(c) of Department Regulation No. 64 when it failed to communicate its acceptance or rejection of annuity and universal life death claims within 15 days of receipt of the claim.

7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

Item	Description
A	The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services on a regular and systematic basis that were not specified in the Management Service Agreement filed with the Department and by receiving investment management services on a regular and systematic basis under an agreement, prior to the agreement being filed with the Department. The Company responded that it will exercise greater care in the future as it relates to inter-company agreements.
B	The examiner recommended that the Company withdraw the service agreements with F&G Life and MWIG since the agreements are inactive, or will become inactive, and the services will be covered under other service agreements. The Company has withdrawn the service agreements.
C	The Company violated Section 308(a) of the New York Insurance Law by failing to give notification to the Superintendent within 30 days of participating in a Tax Sharing Agreement, as advised by Circular Letter No. 33 (1979). The Company responded that it will exercise greater diligence in the future.
D	The examiner recommended that the Company have its officers and directors complete appropriate conflict of interest questionnaires every year. The Company stated that the failure to complete the conflict of interest questionnaires in 2002 was an oversight. The conflict of interest questionnaires have been completed for all subsequent years.
E	The examiner recommended that the Company take greater care in the preparation of its filed annual statement. The Company agreed to exercise greater due diligence going forward.

Item	Description
F	The examiner recommended that additional reserves of $3,500,000 be held until demonstrated redundant by subsequent asset adequacy analysis using assumptions and methodology with the same general level of conservatism recommended by the Department. This recommendation was followed and the Company was subsequently able to demonstrate the redundancy by subsequent asset adequacy analysis.
G	The Company violated Section 243.2(b) of Department Regulation No. 152 by failing to maintain its lapsed policy records as required by the Regulation. The Company has implemented a scanning process which will alleviate these occurrences in the future. All lapsed policy records are scanned into the Company's computer data, will be retained infinitely and will be available for access and review by Department personnel upon request.
H	The Company violated Section 3203(a)(2) of the New York Insurance Law by failing to refund premiums for periods beyond the end of the policy month in which the death occurred. The Company refunded premiums to policyholders' estates in instances where premiums were held beyond the policy month in which the death occurred.
I	The Company violated Section 325(a) of the New York Insurance Law by failing to maintain its books of account and complete minutes of its board of directors meetings at its principal office in this state. The Company's books of account and complete minutes of its board of directors meetings are maintained at its principal office in this state.

8. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

Item	Description	Page No(s).
A	The Company violated Section 1202(b)(2) of the New York Insurance Law when it failed to establish a committee comprised solely of directors who are not officers or employees of the Company or of any entity controlling or under common control with the Company and also when it failed to have an independent committee evaluate the performance or recommend the compensation of the officers deemed by the such committee to be principal officers.	6 – 7
B	The Company violated Section 219.4(e) of Department Regulation No. 34-A when it used the words “free” and “no additional premium” with respect to the accidental death benefit which is available as part of the policy being advertised.	18
C	The Company violated Section 51.6(b)(4) of Department Regulation No. 60 when it did not furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract, and the completed Disclosure Statement within ten days of the receipt of the application.	18 – 19
D	The Company violated Section 243.2(b)(1) of Department Regulation No. 152 when it did not maintain proof of its communication with the replaced company.	18 – 19
E	The Company violated Section 216.4(e) of Department Regulation No. 64 by not maintaining a complaint log that registers and monitors all the Company’s complaint activity.	20
F	The Company violated Section 216.4(b) of Department Regulation No. 64 when it did not respond within 15 days to pertinent communication from its policyholders.	20
G	The Company violated Section 216.6(c) of Department Regulation No. 64 when it failed to communicate its acceptance or rejection of annuity and universal life death claims within 15 days of receipt of the claim.	21

Respectfully submitted,

_____________/s/___________
Phares Caton
Associate Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

Phares Caton, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

_____________/s/___________
Phares Caton

Subscribed and sworn to before me

this__________ day of ____________________200

APPOINTMENT NO. 22555

STATE OF NEW YORK

INSURANCE DEPARTMENT

I, HOWARD MILLS, Superintendent of Insurance of the State of New York,

pursuant to the provisions of the Insurance Law, do hereby appoint:

PHARES CATON

as a proper person to examine into the affairs of the

FIDELITY AND GUARANTY LIFE INSURANCE COMPANY OF NEW YORK

and to make a report to me in writing of the condition of the said

COMPANY

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name
and affixed the official Seal of the Department
at the City of New York

this 30th day of October, 2006

HOWARD MILLS
Superintendent of Insurance

Superintendent