



STATE OF NEW YORK INSURANCE DEPARTMENT  
REPORT ON EXAMINATION  
OF THE  
AMERICAN EQUITY INVESTMENT  
LIFE INSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2004

DATE OF REPORT:

OCTOBER 7, 2005

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OF THE  
AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY OF NEW YORK  
AS OF  
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EXAMINER:

ANTHONY MAURO

## TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Executive summary	2
2. Scope of examination	4
3. Description of Company	5
A. History	5
B. Holding company	5
C. Management	7
D. Territory and plan of operation	11
E. Reinsurance	12
4. Significant operating results	13
5. Financial statements	15
A. Assets, liabilities, capital and surplus	15
B. Condensed summary of operations	16
C. Capital and surplus account	17
6. Market conduct activities	18
A. Advertising and sales activities	18
B. Underwriting and policy forms	20
C. Treatment of policyholders	20
7. Department Regulation No. 152	21
8. Internal Audit	22
9. Summary and conclusions	23



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

David A. Paterson  
Governor

Eric R. Dinallo  
Superintendent

September 11, 2008

Honorable Eric R. Dinallo  
Superintendent of Insurance  
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22337, dated March 7, 2005 and annexed hereto, an examination has been made into the condition and affairs of American Equity Investment Life Insurance Company of New York, hereinafter referred to as "the Company" or "AENY," at its home office located at 1979 Marcus Avenue, Lake Success, New York 11042.

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, 2004 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. (See item 3C of this report).

The examiner recommends that the Company establish and maintain an independent and competently staffed internal audit function. (See item 8 of this report)

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 when it failed to examine completed "Disclosure Statements" in order to ascertain that they were accurate and met the requirements of the Insurance Law and Department Regulation No. 60. The Company violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not accurate, the Company failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore. (See item 6A of this report)

The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted above and provide relief to all contractholders whose contracts were replaced prior to March 2005, and who did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing annuity contracts. (See item 6A of this report)

The Company violated Section 243.3(c) Department Regulation No. 152 when it failed to establish and maintain a records retention plan that included a description of the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records. (See item 7 of this report)

The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to notify the Superintendent, at least 30-days prior thereto, of its intention to enter into an agreement with EquiTrust, an affiliate, whereby EquiTrust would perform certain investment accounting services on a regular and systematic basis. (See item 3B of this report)

The Company violated Section 4232(a)(2)(iii) of the New York Insurance Law for crediting additional amounts on annuity contracts without written criteria approved by the board of directors of the Company. (See item 6C of this report)

## 2. SCOPE OF EXAMINATION

This is the first regular examination of the Company. The Company was incorporated on March 15, 2001 and commenced business on July 1, 2001. This examination covers the period from July 1, 2001 through December 31, 2004. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2004 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, 2004 to determine whether the Company's 2004 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
- Fidelity bond and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Accounts and records
- Financial statements

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

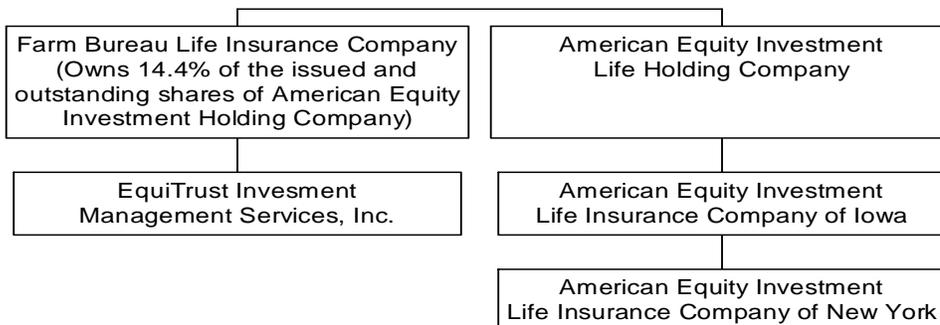
#### A. History

The Company was incorporated as a stock life insurance company under the laws of the State of New York on March 15, 2001, was licensed and commenced business on July 1, 2001. Initial resources of \$10,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$8,000,000 were provided through the sale of 2,000,000 shares of common stock (with a par value of \$1 each) for \$5 per share. In January 2004, American Equity Investment Life Insurance Company (“AELIC”) made an investment in the Company in the amount of \$20,000,000 through a cash contribution.

#### B. Holding Company

The Company is a wholly owned subsidiary of AELIC, an Iowa insurance company. AELIC is in turn a wholly owned subsidiary of AEL, an Iowa life insurance holding company. AEL is the Company’s ultimate parent.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2004 follows:



The Company’s investment accounting functions are performed by EquiTrust Investment Management Services, Inc. (“EquiTrust”). EquiTrust is a subsidiary of Farm Bureau Life Insurance Company (“FBL”), a stock life insurance company that is wholly owned by FBL Financial Group, Inc. (“Farm Bureau”), an Iowa holding company that is majority owned and

controlled by the Iowa Farm Bureau Federation (“Federation”). As of December 31, 2004, FBL owned 14.4% of the issued and outstanding shares of AEL, the Company’s ultimate parent.

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

Type of Agreement and Dept. File No.	Effective Date	Provider of Service	Recipient of Service	Specific Service(s) Covered	Expense For Each Year of the Examination	
					Year	Expense
Management Services Agreement 29073A	3/19/2001	AELIC	The Company	All services other than investment advisory and investment accounting services.	2001	\$ 0
					2002	\$( 70,782)
					2003	\$( 36,477)
					2004	\$(280,559)
Investment Advisory Agreement 29073A	3/22/2001	AEL	The Company	Investment advisory services	2001	\$ 0
					2002	\$( 27,475)
					2003	\$( 44,183)
					2004	\$( 105,970)
Investment Accounting Agreement 29073A	7/10/2001	EquiTrust	The Company	Investment accounting services	2001	\$( 5,000)
					2002	\$( 15,000)
					2003	\$( 20,000)
					2004	\$( 20,000)

Section 1505(d) of the New York Insurance Law states, in part:

“The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto. . . .

(3) rendering of services on a regular or systematic basis . . .”

By means of a letter dated February 26, 2001, the Department was furnished a Special Commitment Agreement issued to assure that neither the Federation, Farm Bureau, FBL nor any of their affiliates (collectively the “Applicants”) would exercise, or attempt to exercise a controlling influence over AEL. In addition, the Department was assured that the Applicants would not enter into any transactions set forth in Section 1505(d) of the New York Insurance

Law without 30-days prior notification. On July 10, 2001, the Company and EquiTrust entered into an agreement whereby EquiTrust would provide certain investment accounting services for the Company on a regular basis. The agreement was not filed with the Department.

The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to notify the Superintendent, at least 30-days prior thereto, of its intention to enter into an agreement with EquiTrust where EquiTrust would perform investment accounting services on a regular and systematic basis.

Section 1505(c) of the New York Insurance Law states, in part:

“The superintendent's prior approval shall be required for the following transactions between a domestic controlled insurer and any person in its holding company system . . . investments . . . involving five percent or more of the insurer's admitted assets at last year-end.”

In January 2004, AELIC made an investment in the Company in the amount of \$20,000,000 through a cash contribution. The investment involved approximately 100.5% of the Company's 2003 admitted assets. The Company failed to obtain the Superintendent's prior approval for the \$20,000,000 surplus contribution. The contribution was ultimately filed with and approved by the Department.

The examiner recommends that in the future, the Company obtain the Superintendent's prior approval for any surplus contributions involving five percent or more of the insurer's admitted assets at last year-end.

### 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 13 directors and that the number of directors shall be increased to not less than 13 within one year following the end of the calendar year in which the admitted assets of the Corporation exceed one and one-half billion dollars. Directors are elected for a period of one year at the annual meeting of the stockholders which is held in May of each year. The Company's by-laws indicate that meetings of the board shall be held from time to time as

determined by resolution of the board and that at least two regular meetings shall be held in each calendar year.

Section 1201(a)(5)(B) of the New York Insurance Law states, in part:

The corporation's proposed charter shall contain . . .

(v) the number of directors . . . the number of directors shall not be less than thirteen, however, a life insurance corporation with admitted assets of less than one and one-half billion dollars, may have not less than nine directors of which at least four must not be officers or employees of the company or 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 . . . .

(vi) . . . and that not less than two shall be residents of this state . . . .”

Article III Section 3.01 of the Company’s by-laws states, in part:

“The number of directors . . . constituting the entire Board of Directors shall be not less than 9 . . . and not more than the maximum number prescribed in the Charter of the Corporation . . . not less than three of the directors shall be residents of the State of New York. Not less than one third of the directors of the Corporation or four directors of Corporation, whichever is greater, shall be persons who are not officers or directors of the Corporation or of any entity controlling, controlled by, or under common control with the Corporation and who are beneficial owners of a controlling interest in the voting stock of the Corporation or any such entity.”

As of December 31, 2004, the board of directors consisted of only eight members. The board members and their principal business affiliation and state of residence, as of December 31, 2004, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Wendy L. Carlson West Des Moines, IA	General Counsel and Assistant Secretary American Equity Investment Life Insurance Company of New York	2001
James M. Gerlach Waukee, IA	Executive Vice President American Equity Investment Life Insurance Company of New York	2001
John M. Matovina Johnston, IA	Vice Chairman American Equity Investment Life Holding Company	2001

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
David J. Noble West Des Moines, IA	President and Chairman of the Board American Equity Investment Life Insurance Company of New York	2001
Debra J. Richardson Des Moines, IA	Senior Vice President and Secretary American Equity Investment Life Insurance Company of New York	2001
Thomas S. Swain Brooklyn, NY	Vice President American Equity Investment Life Insurance Company of New York	2001
Harley A. Whitfield* Spirit Lake, IA	Attorney Whitfield & Eddy, PLC	2001
Kevin R. Wingert Panora, IA	Vice President American Equity Investment Life Insurance Company of New York	2001

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

The Company violated Section 1201(a)(5)(B)(v) of the New York Insurance Law by failing to maintain at least nine directors on its board.

The Company also violated its own by-laws by failing to maintain at least the minimum number of directors on its board as fixed by its by-laws.

A review of the composition of the membership of the board revealed that during the examination period, only one member of the board was not an officer or director of the Company or of any entity controlling, controlled by, or under common control with the Company and only one member of the board was a resident of New York State.

The Company violated Section 1201(a)(5)(B)(v) of the New York Insurance Law by failing to ensure that at least four directors of the Corporation were not officers or employees of the Company or any entity controlling, controlled by, or under common control with the Company.

The Company also violated Section 1201(a)(5)(B)(vi) of the New York Insurance Law by failing to maintain at least the minimum number of directors who are residents of New York State on its board of directors.

The Company did not comply with Article III, Section 3.01 of its by-laws when it failed to maintain at least three directors who were residents of New York State and when it failed to ensure that at least four directors were not officers or employees of the Company, or any entity controlling, controlled by, or under common control with the Company.

Effective June 2005, Robert L. Hilton, and effective October 2005, Robert L. Howe and Alexander Clark were elected as independent directors. Mr. Clark is also a New York resident.

At incorporation, the Company had ten directors listed on its Charter. A review of the attendance at the board meetings revealed that two of those directors did not attend any meetings and a third director did not attend the first three board meetings or 25% of the total meetings held during the examination period.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the Company. It is essential that the board members attend meetings consistently and set forth their views on relevant matters so that appropriate policy decisions may be reached by the board. Individuals who consistently fail to attend the board's regular meetings, do not fulfill such criteria. Board members who consistently fail to attend board meetings should resign or be replaced.

The examiner recommends that the Company replace, in a timely manner, any board member who consistently fails to attend board meetings.

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 recommending the selection of independent certified public accountants, reviewing the company's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, 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 did not 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 have it perform the responsibilities pursuant to the above section of Law.

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 have it perform the responsibilities pursuant to the above section of Law.

The following is a listing of principal officers of the Company as of December 31, 2004:

<u>Name</u>	<u>Title</u>
David J. Noble	President and Chairman
Terry A. Reimer	Chief Operating Officer, Treasurer and Executive Vice President
James M. Gerlach	Executive Vice President
Debra J. Richardson	Senior Vice President and Secretary
Wendy L. Carlson	General Counsel and Assistant Secretary
Cynthia L. Anderson	Vice President – Underwriting
Judy Z. Karcher*	Vice President – Compliance
Thomas S. Swain	Vice President
Kevin R. Wingert	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 and annuities as defined in paragraphs 1 and 2 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business only in New York State. The Company's product portfolio consisted of a flexible premium deferred annuity. In September 2004, the Department approved a single premium immediate annuity; however, as of the date of this report, none have been issued. In 2004, 97.6% of annuity considerations were received from New York. Considerations were also received from six other states with Florida (1.4%) being the largest.

The Company reported 642 annuities in force as of December 31, 2004 with 38% of the contracts being tax qualified and 62% being non-tax qualified. The average contract holder age

is 64.3 years and the average fund value is \$55,000. All policies are written on a non-participating basis.

The Company's agency operations are conducted on a general agency basis and all agents are considered independent agents. As of December 31, 2004, the sales force consisted of 600 licensed and appointed agents and agencies. However, not all agents wrote policies during the examination period.

E. Reinsurance

As of December 31, 2004, the Company had no reinsurance treaties in effect. The Company's initial plan of operation states that it will not enter into any reinsurance transactions.

#### 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 during the period under review:

	<u>July 1, 2001</u>	<u>December 31, 2004</u>	<u>Increase</u>
Admitted assets	<u>\$10,000,000</u>	<u>\$64,021,404</u>	<u>\$54,021,404</u>
Liabilities	<u>\$ 0</u>	<u>\$32,993,483</u>	<u>\$32,993,483</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	8,000,000	27,948,754	19,948,754
Unassigned funds (surplus)	<u>0</u>	<u>1,079,167</u>	<u>1,079,167</u>
Total capital and surplus	<u>\$10,000,000</u>	<u>\$31,027,921</u>	<u>\$21,027,921</u>
Total liabilities, capital and surplus	<u>\$10,000,000</u>	<u>\$64,021,404</u>	<u>\$54,021,404</u>

The significant growth in the Company's assets is primarily due to the \$20,000,000 capital contribution from the Company's ultimate parent in 2004.

The Company's invested assets as of December 31, 2004, were mainly comprised of bonds (96.9%) and cash and short-term investments (3.1%).

The Company's entire bond portfolio, as of December 31, 2004, was comprised of investment grade obligations.

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

	<u>Ordinary Annuities</u>			
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Outstanding, end of previous year	0	4	120	183
Issued during the year	4	117	68	470
Other net changes during the year	<u>0</u>	<u>1</u>	<u>5</u>	<u>11</u>
Outstanding, end of current year	<u>4</u>	<u>120</u>	<u>183</u>	<u>642</u>

The following is the net gain 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:

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Individual annuities	\$138,593	\$68,670	\$(43,176)	\$662,696
Supplementary contracts	<u>0</u>	<u>0</u>	<u>0</u>	<u>46,678</u>
Total	<u>\$138,593</u>	<u>\$68,670</u>	<u>\$(43,176)</u>	<u>\$669,374</u>

The fluctuations in the annuity line are due to the fact that Company only began writing in 2001.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2004, as contained in the Company's 2004 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, 2004 filed annual statement.

### A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2004

#### Admitted Assets

Bonds	\$61,375,499
Cash, cash equivalents and short term investments	1,950,430
Investment income due and accrued	670,967
Net deferred tax asset	24,507
 Total admitted assets	 <u>\$64,021,404</u>

#### Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$30,659,107
Liability for deposit-type contracts	444,339
Contract liabilities not included elsewhere	
Interest maintenance reserve	478,891
General expenses due or accrued	8,563
Taxes, licenses and fees due or accrued, excluding federal income taxes	82,671
Remittances and items not allocated	3,583
Miscellaneous liabilities:	
Asset valuation reserve	65,831
Payable to parent, subsidiaries and affiliates	<u>1,250,498</u>
 Total liabilities	 <u>\$32,993,483</u>
 Common capital stock	 \$ 2,000,000
Gross paid in and contributed surplus	27,948,754
Unassigned funds (surplus)	<u>1,079,167</u>
Surplus	<u>\$29,027,921</u>
Total capital and surplus	<u>\$31,027,921</u>
 Total liabilities, capital and surplus	 <u>\$64,021,404</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Premiums and considerations	\$155,000	\$5,652,038	\$2,500,771	\$26,095,580
Investment income	<u>270,467</u>	<u>471,812</u>	<u>866,954</u>	<u>2,518,286</u>
Total income	<u>\$425,467</u>	<u>\$6,123,850</u>	<u>\$3,367,725</u>	<u>\$28,613,865</u>
Benefit payments	\$ 12	\$ 97,388	\$ 408,644	\$ 1,188,976
Increase in reserves	141,999	5,167,116	2,183,495	23,166,497
Commissions	13,175	472,986	235,982	2,234,364
General expenses and taxes	<u>49,800</u>	<u>137,412</u>	<u>260,681</u>	<u>797,654</u>
Total deductions	<u>\$204,986</u>	<u>\$5,874,902</u>	<u>\$3,088,802</u>	<u>\$27,387,490</u>
Net gain	\$220,481	\$ 248,948	\$ 278,923	\$ 1,226,375
Federal and foreign income taxes incurred	<u>81,888</u>	<u>180,278</u>	<u>322,099</u>	<u>557,001</u>
Net gain (loss) from operations before net realized capital gains	\$138,593	\$ 68,670	\$ (43,176)	\$ 669,374
Net realized capital gains	<u>0</u>	<u>63,763</u>	<u>223,266</u>	<u>0</u>
Net income	<u>\$138,593</u>	<u>\$ 132,433</u>	<u>\$ 180,090</u>	<u>\$ 669,374</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Capital and surplus, December 31, prior year	\$ <u>0</u>	\$ <u>10,087,090</u>	\$ <u>10,210,105</u>	\$ <u>10,383,991</u>
Net income	\$ 138,593	\$ 132,433	\$ 180,090	\$ 669,374
Change in net deferred income tax	3,770	(3,770)	7,215	146,167
Change in non-admitted assets and related items	(4,027)	4,027	0	(128,875)
Change in asset valuation reserve	0	(9,675)	(13,419)	(42,737)
Capital changes:				
Paid in	2,000,000	0	0	0
Surplus adjustments				
Paid in	<u>7,948,754</u>	<u>0</u>	<u>0</u>	<u>20,000,000</u>
Net change in capital and surplus for the year	\$ <u>10,087,090</u>	\$ <u>123,015</u>	\$ <u>173,886</u>	\$ <u>20,643,929</u>
Capital and surplus, December 31, current year	\$ <u>10,087,090</u>	\$ <u>10,210,105</u>	\$ <u>10,383,991</u>	\$ <u>31,027,920</u>

## 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 51.6 of Department Regulation No. 60 states, in part:

“Duties of Insurers . . .

(b) Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .

(3) Examine any proposal used, including the sales material used in the sale of the proposed life or annuity contract, and the “Disclosure Statement,” and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part . . .

(5) Submit quarterly reports within thirty days of the end of each quarter, beginning at the end of the first full calendar quarter after the effective date of this Part, to the Superintendent of Insurance, indicating which insurers, if any, have failed to provide the information as required in Section 51.6(c)(2) herein . . .

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore . . .

(c) Where a replacement has occurred or is likely to occur, the insurer whose life insurance policy or annuity contract is to be replaced shall . . .

(2) Within twenty days of receipt of a request from a licensee of the Department, for information necessary for completion of the “Disclosure Statement” with respect to the life insurance policy or annuity contract proposed to be replaced, together with proper authorization from the applicant, furnish the required information simultaneously to the agent of record of the existing life insurance policy or annuity contract being replaced and the agent and insurer replacing the life insurance policy or annuity contract. This information shall include the insurer's customer service telephone number, the current status of the existing life insurance policy or annuity contract and the currently illustrated dividends/interest and other non-guaranteed costs and benefits.”

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 . . .

(8) Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review.”

The examiner reviewed a sample of 35 replacement transactions that occurred from the Company’s date of inception through the date of this Report. The review revealed that during the examination period the Company had no system in place to examine the “Disclosure Statements” in accordance with Section 51.6(b)(3) of Department Regulation No. 60. As a result, the following issues were noted:

- 18 of the 35 (51%) “Disclosure Statements” reviewed by the examiner were not accurate, in that the amounts reported on the disclosure statement were not net of surrender charges which made the Company’s contracts appear more favorable than they should have had the disclosure statement been completed correctly (i.e., amounts on the Disclosure Statement appear higher than what could be earned on the Company’s contracts).
- One of the 35 policy files did not contain the documentation received from the company being replaced that was used to complete the “Disclosure Statement”.
- Two of the 35 "Disclosure Statements" contained agent statements that were not accurate and misstated the contract’s features.

In all of the above instances where the Disclosure Statement was not accurate, the Company failed to either have the deficiencies corrected or reject the application within ten days from the date of receipt of the application.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 when it failed to examine completed “Disclosure Statements” in order to ascertain that they were accurate and met the requirements of the Insurance Law and Department Regulation No. 60.

The Company violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not accurate, the Company failed to, within ten days from the date of receipt of the application, either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore.

In March 2005, the Company established and implemented procedures to examine the accuracy of the completed “Disclosure Statements” and to correct any deficiencies in order to

meet the requirements of the Regulation. In order to determine that the Company had actually implemented these procedures the examiner reviewed 15 replacements that were initiated in 2005 and subsequently declined due to inaccuracies. No violations of the above sections of Department Regulation No. 60 were found after the Company took corrective action.

During the period under review, the Company did not file any quarterly reports to the Superintendent of Insurance, indicating which insurers, if any, had failed to provide the information as required by Section 51.6(c)(2) of Department Regulation No. 60.

The Company violated Section 51.6(b)(5) of Department Regulation No. 60 when it failed to file quarterly reports to the Superintendent of Insurance, indicating which insurers, if any, had failed to provide the information as required by Section 51.6(c)(2).

The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted above and provide relief to all contractholders whose contracts were replaced prior to March 2005, and who did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing annuity contracts.

#### 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 4232 of the New York Insurance Law states, in part:

“(a)(1) If any contract subject to sections four thousand two hundred twenty-three of this article, provides for additional amounts to be credited to the contract during any period . . .

(2) No such additional amounts shall be guaranteed or credited except upon: (i) reasonable assumptions as to investment income, mortality, and expenses; (ii) a basis equitable to all contract holders of a given class; and (iii) written criteria approved by the board of directors of the company or a committee thereof.”

During the period under review, the Company made several changes to the renewal interest rate it credits to all annuity funds held after the first contract year. Although the minutes of the board of directors meetings stated that the interest rates established for the Company were ratified, confirmed and approved, the minutes did not indicate the exact rate that was approved or contain the written criteria approved by the board or a committee thereof for such additional amounts credited.

The Company violated Section 4232(a)(2)(iii) of the New York Insurance Law for crediting additional amounts on annuity contracts without written criteria approved by the board of directors of the Company.

#### 7. DEPARTMENT REGULATION NUMBER 152

Section 243.3(c) of Department Regulation No. 152 states:

“An insurer shall establish and maintain a records retention plan. The plan shall include a description of the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records. Such plan shall be provided to the superintendent upon request. The insurer shall certify the accuracy of any records that are provided in accordance with its record retention plan.”

Upon requesting a copy of the Company’s records retention plan for review, the examiner was informed that a formal written records retention plan had not been established. The Company maintains records in paper format and as data imaged files. Currently, agent files, policy form approval files and some accounting files are being imaged onto electronic media. These files are backed-up on a regular basis.

The Company violated Section 243.3(c) of Department Regulation No. 152 when it failed to establish and maintain a records retention plan that included a description of the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records.

The examiner recommends that the Company establish a formal written records retention plan and have such plan reviewed and approved by its board of directors.

## 8. INTERNAL AUDIT

Internal audit is an integral part of corporate governance that also includes the audit committee, the board of directors, senior management and the external auditors. In particular, internal auditors and audit committees are mutually supportive. Consideration of the work of internal auditors is essential for the audit committee to gain a complete understanding of the Company's operations. Internal audit identifies strategic, operational and financial risks facing the organization and assesses controls put in place by management to mitigate those risks.

In response to the examination planning questionnaire, the Company indicated that there is no internal audit function. This was confirmed during the examination.

The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the outside committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control. To the extent that audits performed by an affiliate on a functional basis are intended to encompass the activities of the Company, it should be clear from the audit workpapers that Company transactions or activities are specifically included in the samples reviewed by internal audit.

## 9. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to notify the Superintendent, at least 30-days prior thereto, of its intention to enter into an agreement with EquiTrust where EquiTrust would perform investment accounting services on a regular and systematic basis.	6 – 7
B	The examiner recommends that in the future, the Company obtain the Superintendent’s prior approval for any surplus contributions involving five percent or more of the insurer’s admitted assets at last year-end.	7
C	The Company violated Section 1201(a)(5)(B)(v) of the New York Insurance Law by failing to maintain at least nine directors on its board.	8 – 9
D	The Company violated its own by-laws by failing to maintain at least the minimum number of directors on its board as fixed by its by-laws.	8 – 9
E	The Company violated Section 1201(a)(5)(B)(v) of the New York Insurance Law by failing to ensure that at least four directors of the Corporation were not officers or employees of the Company or any entity controlling, controlled by, or under common control with the Company.	8 – 9
F	The Company violated Section 1201(a)(5)(B)(vi) of the New York Insurance Law by failing to maintain at least the minimum numbers of directors who are residents of New York State on its board of directors.	8 – 10
G	The Company did not comply with Article III, Section 3.01 of its by-laws when it failed to maintain at least three directors who were residents of New York State and when it failed to ensure that at least four directors were not officers or employees of the Company, or any entity controlling, controlled by, or under common control with the Company.	8 – 10
H	A review of the attendance at the board meetings revealed that two of the directors did not attend any meetings and a third director did not attend the first three board meetings or 25% of the total meetings held during the examination period.	10

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The examiner recommends that the Company replace, in a timely manner, any board member who consistently fails to attend board meetings.	10
J	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.	10 – 11
K	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 when it failed to examine completed “Disclosure Statements” in order to ascertain that they were accurate and met the requirements of the Insurance Law and Department Regulation No. 60.	19
L	The Company violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not accurate, the Company failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore.	19
M	The Company violated Section 51.6(b)(5) of Department Regulation No. 60 when it failed to file quarterly reports to the Superintendent of Insurance, indicating the insurers, if any, have failed to provide the information as required in Section 51.6(c)(2).	20
N	The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted above and provide relief to all contractholders whose contracts were replaced prior to March 2005, and who did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing annuity contracts.	20
O	The Company violated Section 4232(a)(2)(iii) of the New York Insurance Law for crediting additional amounts on annuity contracts without written criteria approved by the board of directors of the Company.	20 – 21
P	The Company violated Section 243.3(c) of Department Regulation No. 152 when it failed to establish and maintain a records retention plan that included a description of the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records.	21

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
Q	The examiner recommends that the Company establish a formal written records retention plan and have such plan reviewed and approved by its board of directors.	21
R	The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the outside committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control.	22



APPOINTMENT NO. 22337

**STATE OF NEW YORK**  
**INSURANCE DEPARTMENT**

I, HOWARD MILLS, Acting Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

**ANTHONY MAURO**

*as a proper person to examine into the affairs of the*

**AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY OF NEW YORK**

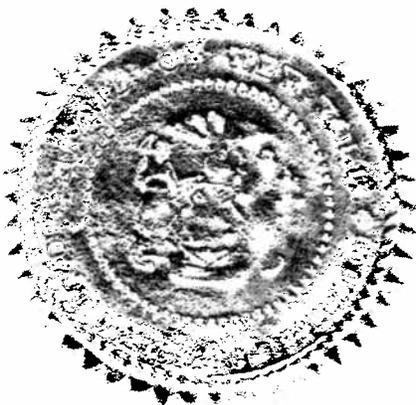
*and to make a report to me in writing of the condition of the said*

**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 7th day of March, 2005*



**HOWARD MILLS**

*Acting Superintendent of Insurance*

A handwritten signature in cursive script, appearing to read "Howard Mills".

*Acting Superintendent*