

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

FIRST SECURITY BENEFIT LIFE INSURANCE

AND ANNUITY COMPANY OF NEW YORK

AS OF

DECEMBER 31, 2003

DATE OF REPORT:

JANUARY 14, 2005

EXAMINER:

CHACKO THOMAS

## TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Company	4
	A. History	4
	B. Holding company	4
	C. Management	7
	D. Territory and plan of operation	8
	E. Reinsurance	9
4.	Significant operating results	11
5.	Financial statements	13
	A. Assets, liabilities, capital and surplus	13
	B. Condensed summary of operations	15
	C. Capital and surplus account	16
6.	Market conduct activities	17
	A. Advertising and sales activities	17
	B. Underwriting and policy forms	17
	C. Treatment of policyholders	17
7.	Prior report summary and conclusions	18
8.	Summary and conclusions	19



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

George E. Pataki  
Governor

Gregory V. Serio  
Superintendent

January 14, 2005

Honorable Gregory V. Serio  
Superintendent of Insurance  
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22250, dated September 2, 2004 and annexed hereto, an examination has been made into the condition and affairs of First Security Benefit Life Insurance and Annuity Company of New York, hereinafter referred to as "the Company," at its home office located at 70 West Red Oak Lane, White Plains, New York 10604.

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, 2003 filed annual statement. (See item 5 of this report)

The examiner's review of the Company's market conduct activities did not reveal significant instances which deviated from the New York Insurance Law, Department regulations and circular letters and the operating rules of the Company. (See item 6 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2000. This examination covers the period from January 1, 2001 through December 31, 2003. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2003 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, 2003 to determine whether the Company's 2003 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
- Officers' and employees' welfare and pension plans
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to the 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

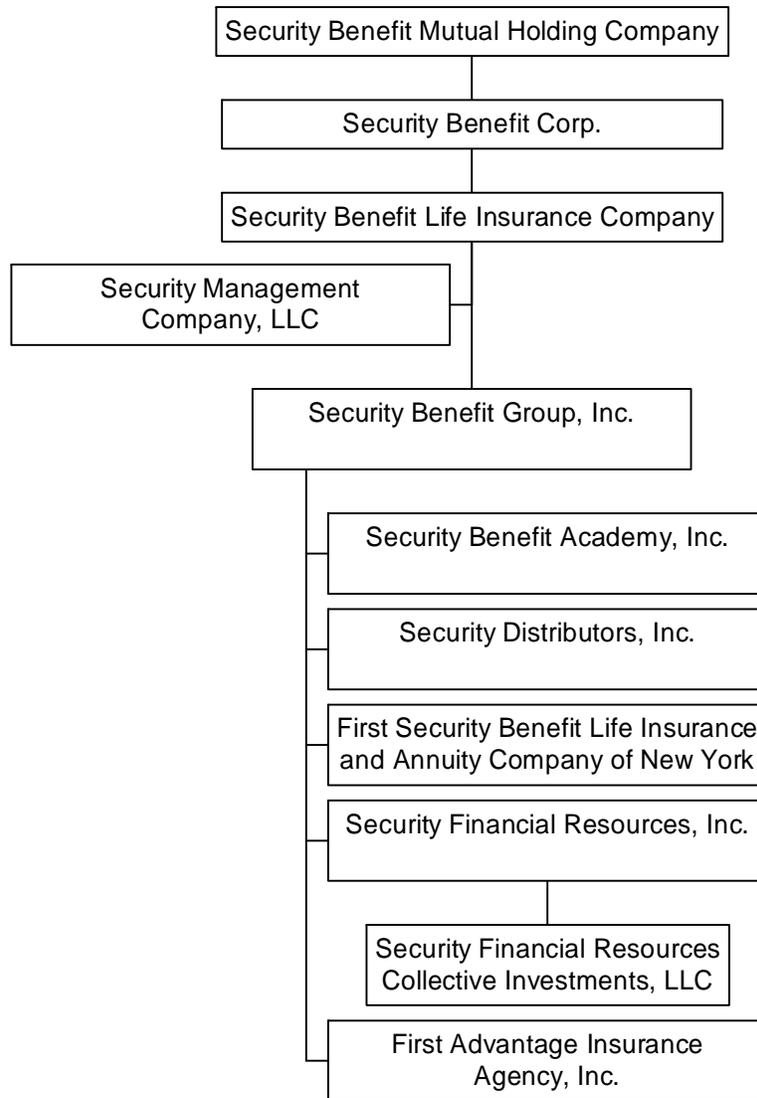
The Company was incorporated as a stock life insurance company under the laws of New York on November 8, 1994, and was licensed and commenced business on July 31, 1995. Initial resources of \$6,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$4,000,000, were provided through the sale of 200,000 shares of common stock (with a par value of \$10 each) for \$30 per share to Security Benefit Life Insurance Company (“SBL”), a Kansas life insurance company. Subsequently, on February 24, 1995, all of the stock was transferred to Security Benefit Group, Inc. (“SBG”), a wholly owned subsidiary of SBL.

On September 8, 1995, the Company merged with Pioneer National Life Insurance Company (“PNL”), a stock life insurance company organized under the laws of the state of Kansas. As of that date, PNL ceased to exist and First Security Benefit Life Insurance and Annuity Company of New York became the surviving company. As a result of this transaction, the Company’s paid in and contributed surplus was increased to \$4,600,000.

#### B. Holding Company

The Company is a wholly owned subsidiary of SBG, a holding company and management services company domiciled in Kansas. SBG is a wholly owned subsidiary of SBL, which in turn is a wholly owned subsidiary of Security Benefit Corp. (“SBC”), a Kansas holding company. The ultimate parent of the Company is Security Benefit Mutual Holding Company, a Kansas corporation.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2003 follows:



The Company had four service agreements in effect during the examination period.

Type of Agreement	Effective Date	Provider of Service(s)	Recipient of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Administrative Service Agreement	1/1/97	SBG	the Company	Accounting, marketing, advertising and disaster recovery	2001: \$(67,761) 2002: \$(40,784) 2003: \$(86,804)
Administrative Service Agreement	6/12/95 Amended 1/1/97	SBL	the Company	Underwriting, claims, actuarial and disaster recovery	2001: \$(24,090) 2002: \$(24,168) 2003: \$(28,500)
Investment Agreement	6/12/95	SBL	the Company	Investment management services	2001: \$ 0 2002: \$(1,604) 2003: \$( 340)
Distribution Agreement	7/1/02	Securities Distributors, Inc. ("SDI")	the Company	Distribution services	2002: \$0 2003: \$0

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

The Company is party to a consolidated tax sharing agreement with its affiliates.

The Company's administrative service agreements with SBL and SBG state that the Company should receive monthly statements for the expenses allocated to the Company. The Company does not receive the monthly statements, as required by the service agreements.

The examiner recommends that the Company abide by the provisions of its service agreements, and obtain and review the monthly statements of incurred expenses before payments are made for services.

A review of the Company's sales distribution expenses revealed that the Company paid SBG, instead of SDI, for the sales distribution expenses associated with the AdvisorDesigns Variable Annuity product. The Company has agreed to pay SDI for its distribution expenses in the future.

The examiner recommends that the Company abide by the provisions of its distribution agreement with SDI and discontinue paying SBG for distribution services.

### 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 21 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in April of each year. As of December 31, 2003, the board of directors consisted of nine members. Meetings of the board are held quarterly.

The nine board members and their principal business affiliation, as of December 31, 2003, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Stephen A. Crane* New York, NY	Chairman, President and Chief Executive Officer AlphaStar Insurance Group Limited	1999
Howard R. Fricke Topeka, KS	Chairman First Security Benefit Life Insurance and Annuity Company of New York	1994
John E. Hayes, Jr.* Belleair Shore, FL	Retired Former Chairman and Chief Executive Officer Western Resources, Inc.	1994
Stephen R. Herbert* Pound Ridge, NY	Attorney Locke & Herbert	1998
J. Michael Keefer Topeka, KS	General Counsel, Secretary and Vice President First Security Benefit Life Insurance and Annuity Company of New York	2003
Kris A. Robbins Topeka, KS	President and Chief Executive Officer First Security Benefit Life Insurance and Annuity Company of New York	1998
James R. Schmank Topeka, KS	Vice President and Treasurer First Security Benefit Life Insurance and Annuity Company of New York	1996
Thomas A. Swank Topeka, KS	Chief Financial Officer and Vice President First Security Benefit Life Insurance and Annuity Company of New York	2003
Katherine White* New York, NY	Retired Former Adjunct Professor of Law Fordham University School of Law and New York Law School	1994

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

In March 2004, James R. Schmank retired from the board and was replaced by Michael G. Odlum.

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, 2003:

<u>Name</u>	<u>Title</u>
Kris A. Robbins	President and Chief Executive Officer
James R. Schmank	Vice President and Treasurer
J. Michael Keefer	General Counsel, Secretary and Vice President
Thomas A. Swank	Vice President and Chief Financial Officer
John T. Gaule	Actuary
Peggy Avey*	Chief Administrative Officer and Assistant Secretary

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

In March 2004, Thomas A. Swank replaced James R. Schmank as Treasurer.

#### 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 licensed to transact business in two states, namely New York and Kansas. In 2003, all annuity considerations were received from New York, and 80% of life insurance premiums were received from Kansas. Policies are written on a non-participating basis.

The Company sells only variable annuities and does not engage in the sale of life or accident and health insurance. The Company inherited, from PNL, some life insurance policies that were 100% reinsured with SBL at the time of the PNL merger with the Company. This business is in run-off status.

From January 1, 2000 until October 2002, the only product sold by the Company was the T. Rowe Price No Load Variable Annuity, a flexible premium variable annuity marketed through direct response mailings. The distributor of the product is T. Rowe Price Investment Services,

Inc., an entity that is not affiliated with the Company. Beginning in October 2002, the Company began selling the AdvisorDesigns Variable Annuity. This product is distributed by SDI and is sold by independent insurance agents affiliated with independent broker/dealers.

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

#### E. Reinsurance

As of December 31, 2003, the Company had a reinsurance treaty in effect with SBL, an accredited reinsurer, to reinsure, on a 100% coinsurance basis, the life insurance policies that were inherited from PNL as a result of the merger. The total face amount of life insurance ceded as of December 31, 2003 was \$290,707. As of December 31, 2003, this closed block of business was comprised of 118 in force policies.

#### 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, 2000	December 31, 2003	Increase (Decrease)
Admitted assets	<u>\$25,001,775</u>	<u>\$62,642,688</u>	<u>\$37,640,913</u>
Liabilities	<u>\$18,079,035</u>	<u>\$55,748,796</u>	<u>\$37,669,761</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	4,600,000	4,600,000	0
Unassigned funds (surplus)	<u>322,740</u>	<u>293,892</u>	<u>(28,848)</u>
Total capital and surplus	<u>\$ 6,922,740</u>	<u>\$ 6,893,892</u>	<u>\$ (28,848)</u>
Total liabilities, capital and surplus	<u>\$25,001,775</u>	<u>\$62,642,688</u>	<u>\$37,640,913</u>

The majority (90.44%) of the Company's admitted assets, as of December 31, 2003, was derived from Separate Accounts.

The Company's invested assets as of December 31, 2003, exclusive of separate accounts, were comprised of bonds (97.5%), and cash and short-term investments (2.5%).

The Company's entire bond portfolio, as of December 31, 2003, 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>
Outstanding, end of previous year	391	382	388
Issued during the year	17	0	0
Other net changes during the year	<u>26</u>	<u>6</u>	<u>316</u>
Outstanding, end of current year	<u>382</u>	<u>388</u>	<u>704</u>

The primary reason for the increase in the number of annuities outstanding in 2003 was due to the October 2002 introduction of the AdvisorDesigns Variable Annuity product. The Company included the new business attributed to the AdvisorDesigns Variable annuity in “Other net changes during the year”, as opposed to “Issued during the year”. The Company stated that, prospectively, it will include all new business as “Issued during the year”.

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:

	<u>2001</u>	<u>2002</u>	<u>2003</u>
Ordinary:			
Individual annuities	<u>\$77,561</u>	<u>\$46,936</u>	<u>\$(139,159)</u>
Total ordinary	<u>\$77,561</u>	<u>\$46,936</u>	<u>\$(139,159)</u>
Total	<u>\$77,561</u>	<u>\$46,936</u>	<u>\$(139,159)</u>

The primary reason for the loss from operations in 2003 was due to the strain caused by increased sales and higher general expenses.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2003, as contained in the Company's 2003 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, 2003 filed annual statement.

### A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2003

#### Admitted Assets

Bonds	\$ 5,745,014
Cash and short term investments	147,390
Investment income due and accrued	77,463
Net deferred tax assets	20,957
From Separate Accounts statement	<u>56,651,864</u>
 Total admitted assets	 <u>\$62,642,688</u>

Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 1,317,877
Commissions to agents due or accrued	87,248
General expenses due or accrued	61,551
Transfers to Separate Accounts due or accrued	(2,469,028)
Taxes, licenses and fees due or accrued	11,633
Federal and foreign income taxes	46,755
Amounts withheld or retained by company as agent or trustee	11,730
Remittances and items not allocated	1,400
Miscellaneous liabilities:	
Asset valuation reserve	6,944
Payable to parent, subsidiaries and affiliates	20,822
From Separate Accounts statement	<u>56,651,864</u>
Total liabilities	<u>\$55,748,796</u>
Common capital stock	\$ 2,000,000
Gross paid in and contributed surplus	4,600,000
Unassigned funds (surplus)	<u>293,892</u>
Total capital and surplus	<u>\$ 6,893,892</u>
Total liabilities, capital and surplus	<u>\$62,642,688</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2001</u>	<u>2002</u>	<u>2003</u>
Premiums and considerations	\$1,114,563	\$1,720,904	\$40,649,541
Investment income	403,608	382,270	341,968
Miscellaneous income	<u>95,143</u>	<u>86,097</u>	<u>415,296</u>
Total income	<u>\$1,613,314</u>	<u>\$2,189,271</u>	<u>\$41,406,805</u>
Benefit payments	\$1,152,464	\$1,372,829	\$ 1,417,734
Increase in reserves	39,425	56,073	875,794
Commissions	0	27,482	891,205
General expenses and taxes	389,570	375,243	443,037
Net transfers to (from) Separate Accounts	(67,286)	293,822	35,737,165
Miscellaneous deductions	<u>0</u>	<u>20,075</u>	<u>2,134,274</u>
Total deductions	<u>\$1,514,173</u>	<u>\$2,145,524</u>	<u>\$41,499,209</u>
Net gain (loss)	\$ 99,141	\$ 43,747	\$ (92,404)
Federal and foreign income taxes incurred	<u>21,580</u>	<u>(3,189)</u>	<u>46,755</u>
Net gain (loss) from operations before net realized capital gains	\$ 77,561	\$ 46,936	\$ (139,159)
Net realized capital gains (losses)	<u>0</u>	<u>0</u>	<u>0</u>
Net income	<u>\$ 77,561</u>	<u>\$ 46,936</u>	<u>\$ (139,159)</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2001</u>	<u>2002</u>	<u>2003</u>
Capital and surplus, December 31, prior year	<u>\$6,922,740</u>	<u>\$6,999,414</u>	<u>\$7,051,237</u>
Net income	\$ 77,561	\$ 46,936	\$ (139,159)
Change in net deferred income tax	0	22,799	118,404
Change in non-admitted assets and related items	210	(17,146)	(138,318)
Change in reserve valuation basis	(1,097)	(766)	1,728
Net change in capital and surplus	<u>\$ 76,674</u>	<u>\$ 51,823</u>	<u>\$ (157,345)</u>
Capital and surplus, December 31, current year	<u>\$6,999,414</u>	<u>\$7,051,237</u>	<u>\$6,893,892</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.

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

### 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.

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

## 7. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommended that the Company's disaster recovery plan include provisions for periodical testing and that such testing be put into practice. The Company should have maintained the test plans and results (indicating problems found or successful completions) and indication of management approval of such. In addition, the disaster recovery plan should have been aligned with the Company's business continuity plan, which was under development at the time of the report date. The examiner also recommended that the Company continue with the development of its business continuity plan until its completion. The examiner recommended that both the disaster recovery plan and the business continuity plan be approved and periodically reviewed by Company management to ensure that they meet the needs of the business.</p> <p>The Company took necessary steps to update the disaster recovery plan and to test it on a periodical basis. The business continuity plan was completed in November 2002.</p>
B	<p>The examiner recommended that an annual cost analysis be performed as required by the service agreements.</p> <p>The Company implemented an activity-based costing model and is now able to base management fees and cost allocations on the analysis of quarterly costs. Accordingly, adjustments are now made to the allocations on a continuous basis.</p>

## 8. SUMMARY AND CONCLUSIONS

Following are the recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Company abide by the provisions of its administrative service agreements, and obtain and review the monthly statements of incurred expenses before payments are made for services.	6
B	The examiner recommends that the Company abide by the provisions of its distribution agreement with SDI and discontinue paying SBG for distribution services.	7

Respectfully submitted,

\_\_\_\_\_/s/  
Chacko Thomas  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Chacko Thomas

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 2005

**APPOINTMENT NO. 22250**

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

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

**CHACKO THOMAS**

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

**FIRST SECURITY BENEFIT LIFE INSURANCE  
AND ANNUITY COMPANY OF NEW YORK**

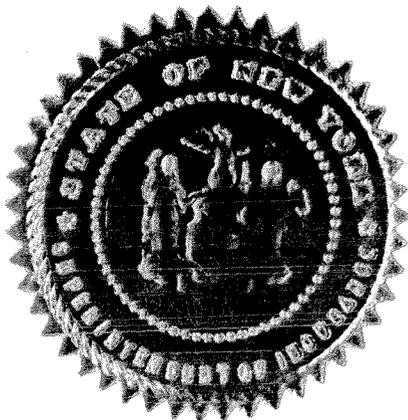
*and to make a report to me in writing of the condition of the said*

**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 2nd day of September, 2004*



**GREGORY V. SERIO**

*Superintendent of Insurance*

*[Handwritten Signature]*  
*Superintendent*