



STATE OF NEW YORK INSURANCE DEPARTMENT  
REPORT ON MARKET CONDUCT EXAMINATION  
OF THE  
FIRST SECURITY BENEFIT LIFE INSURANCE AND ANNUITY COMPANY  
OF NEW YORK

CONDITION:

DECEMBER 31, 2006

DATE OF REPORT:

MARCH 21, 2008

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EXAMINER:

JULIUS ASUBONTENG

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

David Paterson  
Governor

James J. Wrynn  
Superintendent

November 6, 2009

Honorable James J. Wrynn  
Superintendent of Insurance  
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 30205, dated September 24, 2008 and annexed hereto, an examination has been made into the affairs of First Security Benefit Life Insurance and Annuity Company of New York, hereinafter referred to as “the Company” or (“FSBL”) 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 material findings and violations contained in this report are summarized below:

- The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application: proof of receipt by the applicant of the Important Notice; and/or the completed Disclosure Statement. (See item 4A of this report)
- The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine the Disclosure Statements, to ascertain that they were accurate and met the requirements of the New York Insurance Law and the Regulation. (See item 4A of this report)
- The Company violated Section 51.6(b)(7) of Department Regulation No. 60 because where the required forms did not meet the requirements of the Regulation or 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. (See item 4A of this report)

## 2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2004 through December 31, 2006. As necessary, the examiner reviewed matters 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 review of market conduct activities and utilized the National Association of Insurance Commissioners' Market Conduct Examiners Handbook or such other examination procedures, as deemed appropriate, in such review.

This report on examination is confined to comments on 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.

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. In January 2005, SBG merged with and into the Company’s affiliate Security Benefit Corporation (“SBC”).

#### B. 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 2006, all annuity considerations were received from New York, and 69% of life insurance premiums were received from Kansas. Policies are written on a non-participating basis.

The Company primarily sells individual variable and fixed annuities and has never engaged in the sale of life or accident and health insurance. The Company inherited from PNL, some life insurance policies that were 100% reinsured with Security Benefit Life Insurance Company (“SBL”) at the time of the PNL merger with the Company. This business is in run-off status.

The Company’s agency operations are conducted on a general agency and direct response basis, primarily marketing individual variable and fixed annuities through independent broker-dealer systems, T. Rowe Price Investment Services, Inc. and the bank market.

#### 4. 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.

##### 1. Advertising

Section 2122(a)(2) of the New York Insurance Law states:

“No insurance agent, insurance broker or other person, shall, by any advertisement or public announcement in this state, call attention to any unauthorized insurer or insurers.”

In five out of 15 (33.3%) variable annuity death claim files reviewed, the Company used claim forms that referenced an unauthorized insurer, SBL, and Security Benefit, (a generic name). These forms did not mention the name of the Company. The Company acknowledged in its response to the examination request, that incorrect claim forms were supplied to beneficiaries in all five cases.

The examiner recommends that the Company refrain from using claim forms that reference unauthorized insurer, SBL and the generic name Security Benefit.

## 2. Department Regulation No. 60

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

### Duties of Insurers

“(a) Each insurer shall: . . .

(2) Require with or as part of each application, a completed ‘Definition of Replacement’ signed by the applicant and agent or broker;

(3) Maintain signed and completed copies of the ‘Definition of Replacement’ for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later; and

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

(2) Require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" and the completed "Disclosure Statement;"

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

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract; proof of receipt by the applicant of the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts;’ the signed and completed ‘Disclosure Statement;’ and the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced indexed by agent and broker, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later;

(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. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein . . . ”

A review of 50 annuity replacements disclosed the following discrepancies:

a) In 8 cases, the Important Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts ("Important Notice") was missing and in 9 instances the Disclosure Statement was missing from the file. There were also 7 instances where the Definition of Replacement was missing from the file.

In 4 out of the 50 annuity replacement transactions reviewed, the Definition of Replacement and or Disclosure Statement were incomplete. The Company failed to obtain accurately completed replacement documentation prior to issue of the contract.

The Company violated Section 51.6(a)(2) of Department Regulation No. 60 by failing to require with or as part of each application a completed "Definition of Replacement" signed by the applicant and agent or broker.

The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application, proof of receipt by the applicant of the Important Notice; and/or the completed Disclosure Statement.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine the Disclosure Statements, to ascertain that they were accurate and met the requirements of the New York Insurance Law and the Regulation.

In the above instances the Company also violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not received with the application, or if the forms did not meet the requirements of the Regulation or 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.

b) In 14 out of the 50 (28.0%) annuity replacement transactions reviewed, the Company failed to maintain the proposal and sales material used in the sale of the proposed annuity contract. Also, in 4 out of the 29 (13.8%) external replacement transactions reviewed, the agent failed to indicate on the disclosure statement what, if any, sales material was used at the point of sale.

The Company violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain a copy of any proposal, including sales materials used in the sale of the proposed annuity contract.

**B. Underwriting and Policy Forms**

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

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

## 5. RECORD RETENTION

Section 243.2(b)(5) of Department Regulation No. 152 states:

“b) Except as otherwise required by law or regulation, an insurer shall maintain: . . .

(5) A licensing record for six calendar years after the relationship is terminated for each Insurance Law licensee with which the insurer establishes a relationship. Licensing records shall be maintained so as to show clearly the dates of appointment and termination of each licensee.”

During the review of producer licensing, the examiner requested termination files for 10 agents who were terminated during the examination period. The Company was unable to provide the termination files for 8 of the 10 agents requested.

The Company violated Section 243.2(b)(5) of Department Regulation No. 152 by failing to maintain licensing records that show clearly the dates of termination of each licensee.

## 6. SUMMARY AND CONCLUSIONS

Following are the violations and recommendation contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Company refrain from using claim forms that reference unauthorized insurer, SBL and the generic name Security Benefit.	5
B	The Company violated Section 51.6(a)(2) of Department Regulation No. 60 by failing to require with or as part of each application a completed "Definition of Replacement" signed by the applicant and agent or broker.	7
C	The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application, proof of receipt by the applicant of the Important Notice; and/or the completed Disclosure Statement.	7
D	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine the Disclosure Statements, to ascertain that they were accurate and met the requirements of the New York Insurance Law and the Regulation.	7
E	The Company violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not received with the application, or if the forms did not meet the requirements of the Regulation or 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.	7
F	The Company violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain a copy of any proposal, including the sales materials used in the sale of the proposed annuity contract.	7 – 8
G	The Company violated Section 243.2(b)(5) of Department Regulation No. 152 by failing to maintain licensing records that show clearly the dates of termination of each licensee.	9



APPOINTMENT NO. 30205

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

I, ERIC R. DINALLO, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**JULIUS ASUBOTENG**

as a proper person to examine into the affairs of the

**FIRST SECURITY BENEFIT LIFE INSURANCE & 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 24th day of September, 2008



ERIC R. DINALLO  
Superintendent of Insurance

*Eric Dinallo*  
Superintendent