

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF

TIAA-CREF LIFE INSURANCE COMPANY

AS OF

DECEMBER 31, 2004

DATE OF REPORT:

MARCH 3, 2006

EXAMINER:

MARK A. MCLEOD

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

George E. Pataki
Governor

Howard Mills
Superintendent

March 3, 2006

Honorable Howard Mills
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22381, dated June 1, 2005 and annexed hereto, an examination has been made into the condition and affairs of TIAA-CREF Life Insurance Company hereinafter referred to as "the Company," at its home office located at 730 Third Avenue, New York, NY 10017.

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 had numerous violations of Department Regulation No. 60 regarding the replacement of life insurance and annuities, whereby policyholders and contract holders did not receive full and accurate disclosure in replacement transactions where an agent was involved. The Company has agreed to implement a remediation plan acceptable to the Department to mitigate the deficiencies noted and provide relief to all of the affected policyholders and contract holders. In addition, the Company has developed and started to implement an audit plan designed to review, test, and monitor compliance with the requirements of Department Regulation No. 60. (See item 6A of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1999. This examination covers the period from January 1, 2000 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).

This was a limited scope examination which included: (1) a review or audit of certain targeted balance sheet items considered by this Department to require analysis, verification or description; (2) a review of certain market conduct activities of the Company; and (3) a review or audit of the items noted in the following paragraph. The balance sheet items targeted for review were bonds, mortgages, cash, other invested assets, reinsurance and aggregate reserves for life contracts. The market conduct activities targeted for review were advertising and sales practices, underwriting and treatment of policyholders (e.g., claims, surrenders). 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 examiner 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
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to violations 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 20, 1996 under the name TIAA Life Insurance Company. The Company was licensed and commenced business on December 18, 1996. The Company was originally established for the purpose of retaining TIAA's taxable life insurance and other non-pension business. Currently, the Company markets life, annuity and health insurance products to the general public. The Company's name was changed to its present name, TIAA-CREF Life Insurance Company, on May 1, 1998. The Company's initial surplus of \$10,000,000 consisted of capital stock, of \$2,500,000 (2,500 shares at \$1,000 par value) and paid in and contributed surplus of \$7,500,000.

During the examination period, the Company received \$25 million, \$10 million, and \$10 million in capital contributions from TIAA in 2001, 2002 and 2003, respectively. The 2003 capital contribution was made pursuant to a financial support agreement. As of December 31, 2004, the Company had common capital stock outstanding and gross paid in and contributed surplus in the amounts of \$2,500,000 and \$287,500,000, respectively.

B. Holding Company

The Company is a wholly owned subsidiary of TIAA-CREF Enterprises, Inc. The Company's ultimate parent is TIAA. The College Retirement Equities Fund ("CREF") is a companion organization to TIAA.

On January 28, 1999, the Department approved an amended and restated service agreement (originally approved on December 17, 1996) between the Company and TIAA whereby TIAA provides to the Company administrative services and facilities necessary for the operation of the life insurance business.

On November 9, 1998, the Company entered into a Financial Support Agreement whereby TIAA agrees to maintain the Company's financial strength as follows:

1. TIAA will cause the Company to maintain at all times the greater of (a) a minimum capital and surplus of \$250 million; or, (b) the capital and surplus necessary to maintain the capital and surplus of the Company at not less than 150% of the NAIC Risk Based Capitalization Model or such other amount necessary to maintain the Company's rating at the same as or

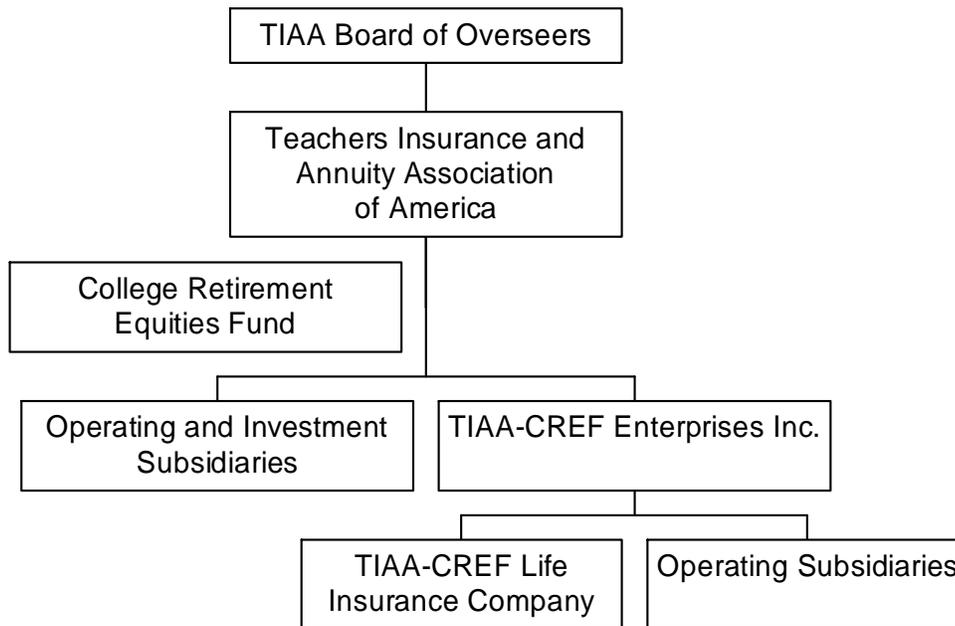
better than TIAA's rating from Moody's Investors Service, Standard and Poor's, Duff and Phelps and A.M. Best.

2. TIAA will cause the Company to be sufficiently funded at all times in order to meet all of its contractual obligations to pay policy benefits and to provide policyholder services.

The Financial Support Agreement remains in effect until such time that the Company attains a financial strength rating equal to or better than TIAA's without giving weight to the backing of the Agreement. TIAA does not construe the Financial Support Agreement as a guarantee, surety or obligation or liability of TIAA to the Company and does not seek to act as guarantor to any creditor of the Company for recourse or against any of the assets of TIAA.

In 2001, the Company entered into a \$100 million unsecured credit facility arrangement with TIAA. As of December 31, 2004, \$30 million of this facility was maintained on a committed basis for which the Company paid a commitment fee of 3 basis points. In 2004, there were 18 draw downs totaling \$79.3 million that were repaid by December 31, 2004.

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 had 6 service agreements in effect 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 |
|---|----------------|---|----------------------------|--|---|
| 1. Amendment and Restated Service Agreement 23811G | 01/01/1999 | TIAA | The Company | Administrative and Special Services | 2004 – (\$53,677,639) 2003 – (\$63,000,805) 2002 – (\$48,166,937) 2001 – (\$35,063,767) 2000 – (\$17,728,414) |
| 2. Cash Disbursement and Reimbursement Agreement | 11/30/1998 | TIAA and TIAA-CREF Individual and Institutional Services | The Company | Cash disbursement and related services | 2004 – (\$298,679) 2003 – (\$180,480) 2002 – (\$176,120) 2001 – (\$204,269) 2000 – (\$333,341) |
| 3. Service Agreement | 12/11/2001 | TIAA , Teachers Personal Investors Services and TIAA-CREF Tuition Financing, INC. | The Company | Administrative and Special Services | 2004 – (\$1,708,628) 2003 – (\$10,443) |
| 4. Distribution Agreement for California's Scholarshare Program 027863G | 09/13/1999 | TIAA-CREF Individual and Institutional Services and TIAA-CREF Tuition Financing, INC. | The Company | Distribution Services | 2004 – (\$772,938) 2003 – (\$904,848) |
| 5. Participation and Distribution Agreement 31448 | 02/20/2002 | TIAA and TIAA-CREF Individual and Institutional Services | The Company | Underwriting and distribution services | 2004 – (\$2,090) |
| 6. Cash Disbursement and Reimbursement Agreement 31449 | 02/20/2002 | TIAA , Teachers Personal Investors Services and TIAA-CREF Tuition Financing, INC. | The Company | Cash disbursement and related services and provision of personnel. | 2003 – (\$2,295,930) |

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

C. Management

The Company's charter provides that the board of directors shall be a minimum of 13 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in November of each year. The bylaws state that there shall be an annual meeting of the board in November of each year. Other meetings and special meetings shall be held on such dates as the board may fix by standing resolution. The bylaws also state that the board may take any action without a meeting if all of the members of the board consent in writing to the adoption of the resolution authorizing the action. As of December 31, 2004, the board of directors consisted of 13 members.

The 13 board members and their principal business affiliation, as of December 31, 2004, were as follows:

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> | <u>Year First Elected</u> |
|--------------------------------------|--|---------------------------|
| Mary E. Beams Weston, MA | Senior Managing Director Teachers Insurance and Annuity Association of America | 2004 |
| Monica D. Calhoun Englewood, CO | Vice President and General Counsel, Product Management Teachers Insurance and Annuity Association of America | 2004 |
| Dennis J. Damaschke Charlotte, NC | Vice President, Insurance Operations Teachers Insurance and Annuity Association of America | 2003 |
| Scott C. Evans Katonah, NY | Executive Vice President Teachers Insurance and Annuity Association of America | 1997 |
| I. Steven Goldstein New York, NY | Executive Vice President Teachers Insurance and Annuity Association of America | 2004 |
| Glenn A. MacFarlane Freehold, NJ | Vice President and Finance Manager TIAA-CREF Life Insurance Company Vice President Teachers Insurance and Annuity Association of America | 2001 |

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> | <u>Year First Elected</u> |
|---------------------------------------|---|---------------------------|
| Erwin W. Martens Sudbury, MA | Executive Vice President Teachers Insurance and Annuity Association of America | 2004 |
| Elizabeth A. Monrad New Canaan, CT | Executive Vice President, Finance and Actuarial TIAA-CREF Life Insurance Company Executive Vice President Teachers Insurance and Annuity Association of America | 2004 |
| Frances Nolan Katonah, NY | Executive Vice President Teachers Insurance and Annuity Association of America | 2004 |
| Dermot J. O'Brien Suffern, NY | Executive Vice President Teachers Insurance and Annuity Association of America | 2004 |
| Keith A. Rauschenbach Hoboken, NJ | Vice President Teachers Insurance and Annuity Association of America | 2004 |
| Bertram L. Scott Charlotte, NC | Chairman, President and Chief Executive Officer TIAA-CREF Life Insurance Company Executive Vice President Teachers Insurance and Annuity Association of America | 2000 |
| John A. Somers Leonardo, NJ | Executive Vice President Teachers Insurance and Annuity Association of America | 1996 |

Dennis Damaschke resigned on January 1, 2005 and was replaced by Bret Benham.

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, 2004:

| <u>Name</u> | <u>Title</u> |
|---------------------|---|
| Bertram L. Scott | Chairman, President and Chief Executive Officer |
| Elizabeth A. Monrad | Executive Vice President, Finance and Actuarial |
| Gary M. Chinery | Vice President and Treasurer |
| Glenn A. MacFarlane | Vice President and Finance Manager |
| Linda S. Dougherty | Second Vice President and Chief Financial Officer |
| Diane M. McGovern | Appointed Actuary |
| Mark L. Serlen | Secretary |

Elizabeth A. Monrad resigned November 15, 2005 from her position as Executive Vice President and Chief Financial Officer. Russell G. Noles was appointed Acting Chief Financial Officer the same date replacing Ms. Monrad.

Arti Jurakhan is the designated consumer services officer per Section 216.4(c) of Department Regulation No. 64.

Prior to 2005, an annual code of ethics acknowledgement by the Company's officers was not part of the Company's procedures. The code of ethics acknowledgement was only signed by employees, including officers, upon commencement of employment with the Company. In addition, Company directors were exempted from those requirements. Beginning in 2005, the Company implemented an automated process for maintaining, monitoring and reporting code of ethics acknowledgements on an annual basis.

The examiner recommends that the Company ensure that all officers and directors complete the conflict of interest questionnaires and code of ethics acknowledgement forms on an annual basis.

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 50 states and the District of Columbia. In 2004, 16.0% of life premiums, 19.4 % of annuity considerations and 20.7% of accident and health premiums were received from New York. Policies were written on a non-participating basis.

Prior to 1999, the Company's only line of business was ordinary life insurance assumed from TIAA on a 50% coinsurance basis. Beginning in January 1999, the Company began offering individual flexible-premium non-qualified annuity contracts (the Personal Annuity Select), with both a fixed-rate general account component and a variable separate account component. The separate account is a unit investment trust. All of the separate account's assets are invested in an underlying portfolio of funds. The underlying funds, TIAA-CREF Life Funds, initially had one fund, the Stock Index Account. Since 1999, nine additional funds have been added.

In addition, the Company began to offer Funding Agreements, which are designed to provide a guaranteed return of principal and a minimum credited interest rate. All Funding Agreement policyholders are qualified state tuition programs, as defined in Section 529 of the Internal Revenue Code. Twelve such contracts are in effect with various state tuition programs.

In late 2000, the Company began offering universal life insurance. In 2001, the Company began offering term life insurance and added a single premium immediate annuity option to its Personal Annuity Select product line.

During 2002, the Company began offering variable universal life insurance with a fixed rate general account component and a variable separate account component. The variable component utilizes five of the TIAA-CREF Life Funds: Stock Index Account; Growth Equity; Growth & Income; International Equity; and Social Choice Equity.

The Company's sales operations are conducted predominately on a direct response basis. The Company also has a salaried sales force that is not based on commissions.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2004:

| <u>Life Insurance Premiums</u> | | <u>Annuity Considerations</u> | |
|--------------------------------|---------------|-------------------------------|---------------|
| New York | 16.1% | New York | 19.4% |
| North Carolina | 8.5 | California | 10.1 |
| California | 7.4 | Florida | 8.3 |
| Pennsylvania | 5.8 | Massachusetts | 5.3 |
| Florida | <u>5.5</u> | Illinois | <u>5.0</u> |
| Subtotal | 43.3% | Subtotal | 48.1% |
| All others | <u>56.7</u> | All others | <u>51.9</u> |
| Total | <u>100.0%</u> | Total | <u>100.0%</u> |

| <u>Accident and Health Insurance Premiums</u> | | <u>Deposit Type Funds</u> | |
|---|---------------|---------------------------|---------------|
| New York | 20.7% | California | 25.8% |
| Massachusetts | 6.6 | Missouri | 21.3 |
| Pennsylvania | 6.0 | Michigan | 21.2 |
| Florida | <u>5.6</u> | Connecticut | 11.1 |
| | | Minnesota | <u>7.0</u> |
| Subtotal | 38.9% | Subtotal | 86.4% |
| All others | <u>61.1</u> | All others | <u>13.6</u> |
| Total | <u>100.0%</u> | Total | <u>100.0%</u> |

E. Reinsurance

As of December 31, 2004, the Company had 23 reinsurance treaties in effect with six reinsurers, four of which are authorized or accredited. The Company and TIAA have reinsurance agreements with Metropolitan Life Insurance Company (“MetLife”) which include: an administrative agreement for MetLife to service the long-term care business of TIAA and the Company; an indemnity reinsurance agreement whereby TIAA and the Company ceded to MetLife 100% of the long-term care liability; and an assumption reinsurance agreement where, after appropriate filings in each jurisdiction, MetLife will begin in 2007, the process of offering TIAA and Company policyholders the option of transferring their policy from TIAA or the Company to MetLife.

The total accident and health insurance premiums ceded to Metlife amounted to \$44,172,365, with a reserve credit taken for other than unearned premium in the amount of \$23,748,187.

The Company’s life and accident and health businesses are reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

For traditional life policies the maximum retention on any one insured life is \$1,500,000. For universal life and variable universal life policies the maximum retention is \$1,500,000 for single life policies and \$2,500,000 per life for coverage under joint or multiple life policies. The total face amount of life insurance ceded as of December 31, 2004 was \$11,564,914,158, which represents 72% of the total face amount of life insurance in force. Reinsurance ceded to unauthorized companies totaled \$53,550,000, with reserve credits and unpaid losses recoverable amounting to \$50,711,545. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$49,856,729, was supported by letters of credit. The Company did not assume any reinsurance.

1. The Company incorrectly reported a ceded reinsurance treaty with Swiss Re Life and Health America Inc. with an effective date of November 1, 2002 as a ceded reinsurance treaty with Life Reassurance Corporation of America with an effective date of April 1, 2002 in Schedule S, Part 3 - Section 1 of the 2004 filed annual statement.

The Company incorrectly reported a ceded reinsurance treaty with Security Life of Denver Insurance Company with an effective date of January 1, 2002 as a ceded reinsurance

treaty with ING Re with an effective date of January 1, 2002 in Schedule S, Part 3 - Section 1 of the 2004 filed annual statement.

The Company incorrectly reported a ceded reinsurance treaty with Lincoln National Life Insurance Company with an effective date of January 1, 2000 as a ceded reinsurance treaty with Lincoln National Reassurance Company in Schedule S, Part 3 - Section 1 of the 2004 filed annual statement.

The examiner recommends that the Company take greater care in the preparation of Schedule S.

2. Section 1308(a)(2)(A) of New York Insurance Law states, in part:

“No credit shall be allowed, as an admitted asset or deduction from liability, to any ceding insurer for reinsurance ceded, renewed, or otherwise becoming effective after January first, nineteen hundred forty, unless:

(i) the reinsurance shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer . . . ”

Circular Letter 1988-5 dated August 4, 1988 states, in part:

“Section 1308 of the Insurance Law prescribes that there shall be no credit allowed for reinsurance recoverables due from unauthorized insurers if the terms of the reinsurance agreement do not comply with the conditions set forth in this Section. Recently, this Department has become aware of the inclusion of provisions in reinsurance agreements which are not in compliance with Section 1308.

For example, it is a condition of Section 1308 that an acceptable reinsurance agreement contain a provision whereby the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

Provisions which result in an unacceptable modification to the above condition include:

(i) ‘ . . . reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer without increase or diminution because of the insolvency of the ceding insurer’;

(ii) ‘ . . . reinsurance is payable as finally determined in the liquidation or receivership proceeding without diminution because of the insolvency of the ceding insurer’ . . . ”

The insolvency clause of the treaty between the Company (“TC Life”) and Lincoln National Life Insurance Company effective January 1, 2000 states, in part:

“A. In the event of the insolvency of TC Life and the appointment of a conservator, liquidator, or statutory successor of TC Life, reinsurance shall be payable to such conservator, liquidator or statutory successor on the basis of claims allowed against TC Life by any court of competent jurisdiction or by the conservator, liquidator or statutory successor of TC Life without diminution because of the insolvency of TC Life or because such conservator, liquidator or statutory successor has failed to pay all or a portion of any claims.”

The aforementioned insolvency clause does not comply with Section 1308(a)(2)(A)(i) of the New York Insurance Law.

The Company violated Section 1308(a)(2)(A) of the New York Insurance Law by taking a reserve credit without including the proper insolvency clause in the reinsurance agreement with Lincoln National Life Insurance Company.

The examiner recommends that the Company revise the reinsurance agreement with Lincoln National Life Insurance Company so that the insolvency clause complies with Section 1308(a)(2)(A)(i) of the New York Insurance Law.

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 statement. 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, <u>1999</u> | December 31, <u>2004</u> | Increase (Decrease) |
|--|-----------------------------|-----------------------------|------------------------|
| Admitted assets | <u>\$336,248,452</u> | <u>\$3,376,040,795</u> | <u>\$3,039,792,343</u> |
| Liabilities | <u>\$ 72,873,159</u> | <u>\$3,075,962,895</u> | <u>\$3,003,089,736</u> |
| Common capital stock | \$ 2,500,000 | \$ 2,500,000 | \$ 0 |
| Gross paid in and contributed surplus | 242,500,000 | 287,500,000 | 45,000,000 |
| Unassigned funds (surplus) | <u>18,375,293</u> | <u>10,077,900</u> | <u>(8,297,393)</u> |
| Total capital and surplus | <u>\$263,375,293</u> | <u>\$ 300,077,900</u> | <u>\$ 36,702,607</u> |
| Total liabilities, capital and surplus | <u>\$336,248,452</u> | <u>\$3,376,040,795</u> | <u>\$3,039,792,343</u> |

The Company's invested assets as of December 31, 2004, exclusive of separate accounts, were mainly comprised of bonds (92.6%), and mortgage loans (6.0%).

The majority (96.5%) of the Company's bond portfolio, as of December 31, 2004, was comprised of investment grade obligations.

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

| <u>Year</u> | <u>Individual Whole Life</u> | | <u>Individual Term</u> | |
|-------------|------------------------------|-----------------|------------------------|-----------------|
| | <u>Issued</u> | <u>In Force</u> | <u>Issued</u> | <u>In Force</u> |
| 2000 | \$ 0 | \$ 0 | \$ 2,500 | \$ 2,899 |
| 2001 | 0 | 0 | 1,765,504 | 1,702,939 |
| 2002 | 76,500 | 119,766 | 4,412,028 | 5,957,654 |
| 2003 | 145,270 | 256,960 | 5,667,693 | 11,412,712 |
| 2004 | 127,552 | 364,341 | 4,499,599 | 15,607,488 |

The table reflects that the Company began offering individual term insurance in 2001 and variable universal life insurance with a fixed rate general account component and a variable separate account component (i.e., individual whole life) in 2002.

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>2000</u> | <u>2001</u> | <u>2002</u> | <u>2003</u> | <u>2004</u> |
| Outstanding, end of previous year, immediate and deferred | 1,889 | 6,367 | 10,360 | 20,103 | 23,992 |
| Issued during the year, immediate and deferred | 4,480 | 4,261 | 10,224 | 4,231 | 3,222 |
| Other net changes during the year | <u>(2)</u> | <u>(268)</u> | <u>(481)</u> | <u>(342)</u> | <u>(1,376)</u> |
| Outstanding, end of current year | <u>6,367</u> | <u>10,360</u> | <u>20,103</u> | <u>23,992</u> | <u>25,838</u> |

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>2000</u> | <u>2001</u> | <u>2002</u> | <u>2003</u> | <u>2004</u> |
|---------------------------|-----------------------|------------------------|------------------------|-----------------------|----------------------|
| Ordinary: | | | | | |
| Life insurance | \$(12,150,626) | \$(18,021,919) | \$(21,476,250) | \$(11,444,653) | \$(15,150,907) |
| Individual annuities | 11,071,856 | 6,218,235 | 8,222,784 | 25,633,880 | 26,045,451 |
| Supplementary contracts | <u>15,739</u> | <u>(16,867)</u> | <u>146,805</u> | <u>(895,361)</u> | <u>(1,342,784)</u> |
| Total ordinary | \$ <u>(1,063,031)</u> | \$ <u>(11,820,551)</u> | \$ <u>(13,106,661)</u> | \$ <u>13,293,866</u> | \$ <u>9,551,760</u> |
| Group annuities | \$ <u>(58,506)</u> | \$ <u>6,355,392</u> | \$ <u>6,560,409</u> | \$ <u>4,206,446</u> | \$ <u>11,567,358</u> |
| Accident and health other | \$ <u>(735,757)</u> | \$ <u>(6,236,168)</u> | \$ <u>(3,496,559)</u> | \$ <u>(3,839,701)</u> | \$ <u>4,880,563</u> |
| Total | \$ <u>(1,857,294)</u> | \$ <u>(11,701,327)</u> | \$ <u>(10,042,811)</u> | \$ <u>13,660,611</u> | \$ <u>25,999,681</u> |

The losses in the ordinary life line of business are due to the development of the Company's universal life product in 2000, which caused a greater percentage of expenses to be allocated to this line of business. The decrease in losses in 2003 is due to an increase in premiums.

The increases in the gain in the individual annuities line of business in 2003 and 2004 are due to an increase in net investment income.

The fluctuations in the group annuities line of business are due to the changes in the allocation percentages for net investment income and general expenses, and the decrease in interest rates being applied to new deposit-type contracts due to market conditions.

In 2002 the general expense allocation changed due to a reallocation of resources needed to support the growth in the Company's business. This reallocation resulted in a 45 percent increase in the average number of full time employees allocated to support the Company's business along with a 17 percent increase in internal rent charges in the home office space. Part of the increase in business was in the Group Funding Agreement product for business associated with the California Scholarship Plan, which resulted in an increase in the percentage of expenses being allocated to the group annuity line of business.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, surplus and other funds 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, SURPLUS AND OTHER FUNDS AS OF DECEMBER 31, 2004

Admitted Assets

| | |
|---|----------------------------|
| Bonds | \$2,727,428,531 |
| Common stocks | 1,456,560 |
| Mortgage loans | |
| First liens | 175,694,788 |
| Cash and short term investments | 40,730,946 |
| Contract loans | 28,823 |
| Investment income due and accrued | 35,204,006 |
| Uncollected premiums and agents' balances in the course of collection | (1,477,844) |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 21,173,838 |
| Other amounts receivable under reinsurance contracts | 672,347 |
| Current federal and foreign income tax recoverable and interest thereon | 3,742,510 |
| Net deferred tax asset | 1,640,000 |
| Receivable from parent, subsidiaries, and affiliates | 11,686,067 |
| Sundry receivables | 2,548,622 |
| From Separate Accounts Statement | <u>355,511,601</u> |
| Total admitted assets | <u>\$3,376,040,795</u> |

Liabilities, Surplus and Other Funds

| | |
|--|------------------------|
| Aggregate reserve for life policies and contracts | \$1,762,897,107 |
| Policy and contract claims: | |
| Liability for deposit-type contracts | 876,604,029 |
| Life | 607,464 |
| Premiums and annuity considerations for life and accident and health contracts received in advance | 32,349 |
| Interest maintenance reserve (contract liabilities not included elsewhere) | 9,160,013 |
| General expenses due or accrued | 22,584,070 |
| Taxes, licenses and fees due or accrued, excluding federal income taxes | 2,096,744 |
| Transfers to Separate Accounts due or accrued | 656,283 |
| Amounts withheld or retained by company as agent or trustee | 790,436 |
| Remittances and items not allocated | 4,135,337 |
| Miscellaneous liabilities: | |
| Asset valuation reserve | 10,763,573 |
| Payable to parent, subsidiaries and affiliates | 27,613,072 |
| Accrued payables to counterparties for open derivative contracts | 2,808,568 |
| Miscellaneous liabilities | 772,610 |
| From Separate Accounts Statement | <u>354,441,241</u> |
| Total liabilities | <u>\$3,075,962,895</u> |
| Common capital stock | \$ 2,500,000 |
| Gross paid in and contributed surplus | 287,500,000 |
| Unassigned funds (surplus) | <u>10,077,900</u> |
| Total capital, surplus and other funds | <u>\$ 300,077,900</u> |
| Total liabilities, capital, surplus and other funds | <u>\$3,376,040,795</u> |

B. CONDENSED SUMMARY OF OPERATIONS

| | <u>2000</u> | <u>2001</u> | <u>2002</u> | <u>2003</u> | <u>2004</u> |
|---|-----------------------|------------------------|------------------------|-----------------------|----------------------|
| Premiums and considerations | \$333,701,980 | \$300,871,088 | \$ 946,537,357 | \$613,509,134 | \$227,075,115 |
| Investment income | 25,926,331 | 47,142,762 | 90,518,441 | 150,108,170 | 148,138,966 |
| Miscellaneous income | <u>197,545</u> | <u>990,580</u> | <u>4,955,308</u> | <u>7,518,352</u> | <u>10,586,072</u> |
| Total income | <u>\$359,825,856</u> | <u>\$349,004,430</u> | <u>\$1,042,011,106</u> | <u>771,135,656</u> | <u>\$385,800,153</u> |
| Benefit payments | \$ 7,230,278 | \$ 23,078,430 | \$ 82,145,373 | \$195,635,672 | \$202,645,430 |
| Increase in reserves | 245,101,883 | 261,307,072 | 884,896,620 | 416,123,414 | 27,718,647 |
| General expenses and other taxes | 17,901,369 | 34,816,778 | 46,162,472 | 57,614,178 | 50,057,413 |
| Net transfers to (from) separate accounts | 89,322,735 | 42,826,941 | 35,520,375 | 73,663,213 | 68,410,055 |
| Miscellaneous deductions | <u>584,877</u> | <u>528,262</u> | <u>1,539,751</u> | <u>2,823,068</u> | <u>2,101,844</u> |
| Total deductions | <u>\$360,141,142</u> | <u>\$362,557,483</u> | <u>\$1,050,264,591</u> | <u>\$745,859,545</u> | <u>\$350,933,389</u> |
| Net gain (loss) | \$ (315,286) | \$ (13,553,053) | \$ (8,253,485) | \$ 25,276,111 | \$ 34,866,764 |
| Federal income taxes | <u>1,542,008</u> | <u>(1,851,726)</u> | <u>1,789,326</u> | <u>11,615,500</u> | <u>8,867,083</u> |
| Net gain (loss) from operations before net realized capital gains | \$ (1,857,294) | \$ (11,701,327) | \$ (10,042,811) | \$ 13,660,611 | \$ 25,999,681 |
| Net realized capital gains (losses) | \$ <u>0</u> | \$ <u>(3,709,073)</u> | \$ <u>(9,995,534)</u> | \$ <u>(2,469,602)</u> | \$ <u>(523,622)</u> |
| Net income | <u>\$ (1,857,294)</u> | <u>\$ (15,410,400)</u> | <u>\$ (20,038,345)</u> | <u>\$ 11,191,009</u> | <u>\$ 25,476,059</u> |

C. CAPITAL AND SURPLUS ACCOUNT

| | <u>2000</u> | <u>2001</u> | <u>2002</u> | <u>2003</u> | <u>2004</u> |
|---|-----------------------|----------------------|-----------------------|----------------------|----------------------|
| Capital and surplus, December 31, prior year | <u>\$263,375,293</u> | <u>\$260,522,372</u> | <u>\$271,608,456</u> | <u>\$262,231,528</u> | <u>\$279,513,669</u> |
| Net income (loss) | \$ (1,857,294) | \$ (15,410,400) | \$ (20,038,345) | \$ 11,191,009 | \$ 25,476,059 |
| Change in unrealized capital gains (losses) | 0 | 0 | (298,939) | (104,652) | 620,737 |
| Change in net deferred income tax | 0 | 0 | 0 | 4,224,000 | (3,893,000) |
| Change in non-admitted assets and related items | (220,430) | 220,430 | (11,364,140) | (3,884,217) | 4,203,024 |
| Change in reserve valuation basis | 0 | 58,607 | 0 | 0 | 0 |
| Change in asset valuation reserve | (700,997) | 1,290,548 | 72,454 | (4,262,945) | (6,101,239) |
| Surplus (contributed to) Separate Accounts during period | (400,000) | 0 | (300,000) | (100,000) | 0 |
| Other changes in surplus in Separate Accounts Statement | 325,800 | (73,101) | 213,042 | 218,946 | 258,650 |
| Cumulative effect of changes in accounting principles | 0 | 0 | 12,339,000 | 0 | 0 |
| Surplus adjustments: | | | | | |
| Paid in | <u>0</u> | <u>25,000,000</u> | <u>10,000,000</u> | <u>10,000,000</u> | <u>0</u> |
| Net change in capital and surplus | <u>\$ (2,852,921)</u> | <u>\$ 11,086,084</u> | <u>\$ (9,376,928)</u> | <u>\$ 17,282,141</u> | <u>\$ 20,564,231</u> |
| Capital and surplus, December 31, current year | <u>\$260,522,372</u> | <u>\$271,608,456</u> | <u>\$262,231,528</u> | <u>\$279,513,669</u> | <u>\$300,077,900</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 51.5 of Department Regulation No. 60 states, in part:

“Each agent and broker shall:

- (a) Obtain with or as part of each application a completed ‘Definition of Replacement’ in a form prescribed by the Superintendent of Insurance and signed by the applicant and the agent or broker and leave a copy of such form with the applicant for his or her records;
- (b) Submit to the insurer along with each application a signed and completed ‘Definition of Replacement;’ and
- (c) Where a replacement has occurred or is likely to occur:
 - (1) Obtain with or as part of each application a list of all existing life insurance policies or annuity contracts proposed to be replaced;
 - (2) Notify the insurer whose policy or contract is being replaced and the insurer replacing the life insurance policy or annuity contract of the proposed replacement. Submit to the insurer whose policy or contract is being replaced a list of all life insurance policies or annuity contracts proposed to be replaced, as well as the policy or contract number for such policies or contracts, together with the proper authorization from the applicant, and request the information necessary to complete the ‘Disclosure Statement’ with respect to the life insurance policy or annuity contract proposed to be replaced. In the event the insurer whose coverage is being replaced fails to provide the information in the prescribed time, the agent or broker replacing the life insurance policy or annuity contract may use, and the insurer replacing the life insurance policy or annuity contract shall review and may accept, good faith approximations based on the information available;
 - (3) Present to the applicant, not later than at the time the applicant signs the application, the ‘*IMPORTANT* Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’ and a completed ‘Disclosure Statement’ signed by the agent or broker in the form prescribed by the Superintendent of Insurance and leave copies of such forms with the applicant for his or her records
...

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

“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 . . .”

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

“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;
- (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’ . . .
- (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 . . .”

Section 51.6(e) of Department Regulation No. 60 states:

“Both the insurer whose life insurance policy or annuity contract is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. These procedures shall include a requirement that all material be dated upon receipt. Such insurers shall also designate a principal officer

specifically responsible for the monitoring and enforcement of these procedures. All insurers covered under this Part shall furnish the Superintendent of Insurance with these procedures and the name and title of the designated principal officer by the effective date of this Part. Any changes in these procedures or the designated principal officer shall be furnished to the Superintendent of Insurance within thirty days of such change.”

Section 51.7(b) of Department Regulation No. 60 states, in part:

“No insurer, agent, broker, representative, officer, or employee of an insurer or any other licensee of this Department shall fail to comply with or engage in other practices that would prevent the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contractholders . . .”

The examiner selected a sample of 105 replacement files issued during the examination period for review from the files identified by the Company as replacements. However, a review of the files revealed that only 62 of the files were actually replacements as defined by Department Regulation No. 60 (see table below). The remaining 43 files were not Department Regulation No. 60 replacements although they were listed in the inventory by the Company.

| <u>Type of Policy or Contract</u> | <u>Number of Files Selected</u> | <u>Number of Files not Replacements</u> | <u>Number of Replacements Reviewed</u> |
|-----------------------------------|---------------------------------|---|--|
| After tax Annuities | 15 | 9 | 6 |
| Individual Term and Whole Life | 50 | 9 | 41 |
| Universal Life | <u>40</u> | <u>25</u> | <u>15</u> |
| Total | <u>105</u> | <u>43</u> | <u>62</u> |

The Company violated Section 51.6(b)(6) of Department Regulation No. 60 for failing to maintain an accurate index of replacements by agent.

In two of the six (33%) after-tax annuity replacement files reviewed the Definition of Replacement was not included in the replacement file. In 11 of the 41 (27%) individual term and whole life replacement files reviewed the Definition of Replacement was not included in the replacement file.

In addition, in 14 of 100 (14%) after-tax annuity general underwriting files reviewed, the Definition of Replacement was not included or not completed; and in 30 of 100 (30%) life

insurance general underwriting files reviewed, the Definition of Replacement was not included or not completed. The examiner notes that the Definition of Replacement is required to be completed in all agent sales, regardless of whether a replacement transaction is involved.

The Company violated Sections 51.6(a)(2) and (3) by failing to require with or as part of each application, a completed Definition of Replacement signed by the applicant and agent or broker and failing to 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, whichever is later.

In five of the six (83%) after-tax annuity replacement contracts reviewed the Disclosure Statement was not included in the file. In one of the six, the Important Notice was not included in the file.

In two of the five (40%) after-tax annuity external replacement files reviewed, the Company did not: notify the replaced companies that their contracts were going to be replaced; request the information necessary to complete the Disclosure Statements; or obtain a signed authorization from the applicants to obtain information necessary to complete the Disclosure Statements.

In 33 out of 41 (80%) individual term and whole life policy replacement files reviewed the Disclosure Statement was not included in the file. In five of the 41 (37%) individual term and whole life policies reviewed the Important Notice was not included in the file.

In 14 of the 15 (93%) universal life policies reviewed the Disclosure Statement was not included in the file. In 10 of the 15 (67%) universal life policies reviewed the Important Notice was not included in the file.

In all 12 (eleven term and whole life and one universal life) replacements where it was indicated on the Disclosure Statement that sales material was used, the sales material was not maintained by the Company.

In 30 of the 35 (86%) life external replacement files reviewed, the Company did not: notify the replaced companies that their policies were going to be replaced; request the information necessary to complete the Disclosure Statements; or obtain a signed authorization from the applicants to obtain information necessary to complete the Disclosure Statements.

The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to 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, and proof of receipt by the applicant of the Important Notice and the completed Disclosure Statement.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine any proposal used, including the Disclosure Statement and ascertain that they were accurate.

The Company violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy, and the notification of replacement to the insurer whose life insurance policy was to be replaced.

In the only after-tax annuity replacement that contained the Disclosure Statement in the file, the applicant signed the application prior to receiving the Disclosure Statement. In seven of the 30 (23%) individual term and whole life replacement files that included the Definition of Replacement in their respective files, the applicant signed the application prior to receiving the Definition of Replacement. In three of the five (60%) universal life replacement files that included the Important Notice in their respective files, the applicant signed the application prior to receiving the Important Notice. In ten out of the 36 (28%) individual life files that have the completed Important Notice in the replacement files, the applicant signed the application prior to receiving the Important Notice.

The Company violated Section 51.7(b) of Department Regulation No. 60 by preventing the orderly working of the Regulation by accepting applications in cases where the Definition of Replacement, Important Notice and/or completed Disclosure Statement were not received by the applicants at or prior to the time that the applications were taken.

The examiner could not find any evidence that the Company submitted to the replaced insurers any proposal, including the sales materials used in the sale of the proposed life policy or annuity contract, and the completed Disclosure Statement within 10 days of receipt of the application for the following replacement contracts and policies reviewed:

- two of the five (40%) after-tax annuity external replacements;
- 19 of the 23 (83%) term and whole life external replacements; and
- all 12 universal life external replacements.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 for failing to furnish to the insurer whose coverage was 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 receipt of the application.

The Company's replacement procedures on file with the Department require that the agent complete and sign an agent's certification form for every replacement situation. The examiner could not find any evidence that the Company obtained a statement signed by the agent or broker for the following replacement situations: in five of the six (83%) after-tax annuity replacement files reviewed; in 38 of the 41 (93%) individual term and whole life replacement files reviewed; and 13 of the 15 (87%) universal life replacement files reviewed. The examiner notes that the agent's certification is important in that it usually identifies the reasons that a particular replacement policy or contract is appropriate.

The review of the replacement files indicated that the Company is not following its filed procedures with the Department to track the sequence of steps that it must follow from the first contact with the applicant to the completion of the Disclosure Statement to ascertain that all the replacement documents are obtained to comply with Department Regulation No. 60.

The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to follow its filed replacement procedures.

The examiner recommends that the Company follow its filed procedures to track the sequence of steps that it must follow to comply with Department Regulation No. 60 and to document when those steps are executed in the replacement files.

As a result of the aforementioned findings, the Department and the Company have agreed on remediation plans for those policy and contract holders that have been adversely affected. The Company has also developed and started to implement an audit plan designed to review, test, and monitor compliance with the requirements of Department Regulation No. 60.

B. Underwriting and Policy Forms

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

1. Section 3209(b) of New York Insurance Law states, in part:

“No policy of life insurance shall be delivered or issued for delivery in this state . . . unless the prospective purchaser has been provided with the following:

- (1) a copy of the most recent buyer's guide and the preliminary information ...at or prior to the time an application is taken . . .
- (2) a policy summary upon delivery of the policy."

Section 3209(g) of New York Insurance Law states:

"Every insurer shall maintain, at its home office or principal office, a complete file containing one copy of each policy summary form authorized by the insurer for use"

Section 53-1.4(a) of Department Regulation No. 74 states, in part:

". . . each insurer shall maintain at its home or principal office, a complete file containing one specimen copy each of the preliminary information form, policy summary form, and sales illustrations authorized by the insurer for each policy form"

Section 53-3.1 of Department Regulation No. 74 states, in part:

". . . (b) Each insurer marketing policies to which this Subpart is applicable shall notify the Superintendent whether a policy form is to be marketed with or without an illustration. For all policies forms being actively marketed on the effective date [February 10, 1999] of this Subpart, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this Subpart, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the Superintendent.

(c) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited...

(d) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this Subpart is required"

Section 53-3.3(d) of Department Regulation No. 74 states, in part:

"(d) Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policyowner in the case of an illustration provided at the time of delivery, as required in this Subpart.

(1) a statement to be signed and dated by the applicant or policyowner reading as follows: 'I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent or broker has told me they are not guaranteed.'

(2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: 'I certify that this

illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration.’ ”

Section 53-3.5(c) of Department Regulation No. 74 states:

“If the basic illustration or revised illustration is sent to the applicant or policyowner by mail from the insurer, it shall include instructions for the applicant or policyowner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer . . . The insurer’s obligation under this Subpart shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer included in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed summary page.”

The examiner reviewed 100 term underwriting files (68 involving policy forms TCL-LPT(NY), TCL-LPT(10NY) and TCL-LPT(15NY), and 32 involving policy form TCL-RT.1(NY)), 50 universal and variable life underwriting files policy forms AM-SVUL.1(NY), AM-JVUL.1(NY), AM-JUL.1(NY), and AM-SUL.1(NY) and the Company’s correspondence with the Department:

| <u>Policy Forms Affected</u> | <u>Number of files reviewed</u> | <u>Type of Policy</u> | <u>Company Notification</u> |
|--|---------------------------------|-----------------------|----------------------------------|
| TCL-RT.1(NY) | 32 | Term | No notification |
| TCL-LPT(NY) TCL-LPT(10NY) TCL-LPT(15NY) | 68 | Term | Marketed without an illustration |
| AM-SVUL.1(NY) AM-JVUL.1(NY) AM-JUL.1(NY) AM-SUL.1(NY) | 50 | Universal Life | Marketed with an illustration |

a. The Company did not provide the applicant with the most recent buyer’s guide at or prior to the time the application was taken for all life insurance policies issued. The Company provides the buyer’s guide to the applicant at the time the policy is delivered.

The Company violated Section 3209(b)(1) of the New York Insurance Law for failing to provide the applicant with the most recent buyer's guide at or prior to the time the application was taken for all life insurance policies issued.

b. The Company used policy form TCL-RT.1(NY) in all 32 cases reviewed without notifying the Superintendent whether they would be marketed with or without an illustration.

The Company violated Section 53-3.1(b) of Department Regulation No. 74 by using Policy form TCL-RT.1(NY) without notifying the Superintendent whether the policy forms were to be marketed with or without an illustration.

c. The Company advised the Department that the universal and variable life forms (policy forms AM-SVUL.1(NY), AM-JVUL.1(NY), AM-JUL.1(NY), and AM-SUL.1(NY)) would be marketed with an illustration.

Ten of the 50 policies reviewed had illustrations that were not signed by the applicant. One policy illustration did not have a signature page. Six policies did not have illustrations.

The Company violated Section 53-3.1(d) of Department Regulation No. 74 by not preparing and delivering illustrations in six of 50 (12%) underwriting files reviewed.

The Company violated Section 53-3.3 (d)(1) of Department Regulation No. 74 by having 11 out of 44 (25%) illustrations that were not signed and dated by the applicant or policyowner.

The Company could not identify whether or not the illustrations were sent to the policyholder by mail or delivered by an agent. With respect to illustrations that might have been sent by mail, the Company did not document that it made diligent efforts to obtain the signed illustrations since the instructions for the return of the signed summary page were not included in the files. With respect to illustrations that might have been delivered by agents, there was no place on the illustration for the agent to certify that the illustration was presented to the applicant and that he or she has explained that any non-guaranteed elements illustrated are subject to change and that he or she has made no statements that are inconsistent with the illustration.

The Company violated Section 53-3.5(c) and Section 53-3.3(d)(2) of Department Regulation No. 74 for failing to make diligent efforts to obtain the signed illustrations or failing to obtain the required agent certifications.

The examiner recommends that the Company implement procedures to ensure that the type of sale (whether direct response or agent sale) is clearly identified.

2. Section 2611(a) of New York Insurance Law states:

“No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.”

In eight of 50 (16%) universal life and variable life underwriting files reviewed the Company required the individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.

The Company violated Section 2611(a) of the New York Insurance Law by requiring individuals proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.

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. INVESTMENT CONTROLS AND RECORDKEEPING

The Department's Capital Markets Bureau conducted a review of the Company's investment operations that included, but was not necessarily limited to, the Company's security pricing process and the Company's reporting of securities in its filed annual statements.

The Company reported two trust preferred securities in Schedule D Part 1 instead of Schedule D Part 2 Section 1 of the 2004 filed annual statement.

The Company reported 46 of 575 securities using either 100.00 as fair value in the "Rate Used to Obtain Fair Value" column in Schedule D Part 1 of the 2004 filed annual statement, and/or the Book/Adjusted Carrying Value was filed the same as Fair value.

The Company reported 13 of 33 foreign securities as domestic, in Schedule D Part 1 of the 2004 filed annual statement. Ten of the foreign bonds were dual domicile special purpose vehicles. Dual structures are registered both in the United States and abroad. It is the Department's position that these structures are generally considered foreign. The Company agreed to report them as foreign going forward. All securities identified by the examiner as foreign were reported as such in the 2005 filed annual statement.

The examiner recommends that the Company take greater care in the preparation of Schedule D, Part 1 in the future.

The external automated pricing sources (for example, SQX, FT Interactive, Bear Stearns), and internal pricing frequently come up as 100.00, or another price exactly the same as book value, as fair value. As it is very unlikely that after interest rate and equity market moves, the fair value of a security remains exactly at 100.00 (or at book value), the value of such sources as well as the methods used are questionable. The fact that a quote simply comes from an external source does not make such quote reliable; the Company should also implement some type of credibility checks to the process. The pricing services may simply default to 100.00 when no real price is available.

The examiner recommends that the Company verify the fair value on at least a sample of securities where fair value appears to be outside the normal range, and take appropriate action to determine fair value where necessary.

The Company is in the process of improving the integrity of the pricing process, having established the Valuation Unit within Investment Services, and by improving the segregation of duties so traders are less involved in the pricing process.

The examiner recommends that when it is necessary for a trader to request price quotes, the counterparty be instructed to send the quote directly to the Valuation Unit.

The examiner also recommends that when vendors are used for pricing, the Company maintain documentation of such quotes, instead of simply inserting those values in a spreadsheet.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations 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 Company violated Section 219.5(a) of Department Regulation No. 34-A by not indicating the manner and extent of distribution for the “Oxymoron” and “Best on the Planet” advertisements in its advertising file.</p> <p>The Company’s advertising file contained the manner and extent of distribution for the advertisements listed in the advertising file.</p> |
| B | <p>The Company violated Section 219.4(a)(3) of Department Regulation No. 34-A by using advertisements containing statements that would have a tendency to confuse the reader as to the true identity of the entity issuing the policy.</p> <p>A review of a sample of the Company’s advertisements did not contain any statements that would have a tendency to confuse the reader as to the true identity of the entity issuing the policy.</p> |
| C | <p>The Company violated Section 219.4(a) of Department Regulation No. 34-A by using advertisements that did not distinguish between the guaranteed rate and the then current credited rate.</p> <p>A review of a sample of the Company’s advertisements did not contain any advertisements that did not distinguish between the guaranteed rate and the then current credited rate.</p> |
| D | <p>The Company violated Section 1313(f) of the New York Insurance Law by using advertisements referring to the assets of TIAA, the Company’s ultimate parent, and CREF, a related entity, without disclosing the assets of the Company.</p> <p>A review of a sample of the Company’s advertisements did not contain any advertisements that referred to the assets of TIAA, the Company’s ultimate parent, and CREF, a related entity, without disclosing the assets of the Company.</p> |

9. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

| <u>Item</u> | <u>Description</u> | <u>Page No(s).</u> |
|-------------|--|--------------------|
| A | The examiner recommends that the Company ensure that all officers and directors complete the conflict of interest questionnaires and code of ethics acknowledgement forms on an annual basis. | 9 |
| B | The examiner recommends that the Company take greater care in the preparation of Schedule S. | 13 |
| C | The Company violated Section 1308(a)(2)(A) of the New York Insurance Law by taking a reserve credit without including the proper insolvency clause in the reinsurance agreement with Lincoln National Life Insurance Company. | 14 |
| D | The examiner recommends that the Company revise the reinsurance agreement with Lincoln National Life Insurance Company so that the insolvency clause complies with Section 1308(a)(2)(A)(i) of the New York Insurance Law. | 14 |
| E | The Company violated Section 51.6(b)(6) of Department Regulation No. 60 for failing to maintain an accurate index of replacements by agent. | 24 |
| F | The Company violated Sections 51.6(a)(2) and (3) by failing to require with or as part of each application, a completed Definition of Replacement signed by the applicant and agent or broker and failing to 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, whichever is later. | 25 |
| G | The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to 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, and proof of receipt by the applicant of the Important Notice and the completed Disclosure Statement. | 25 |

| <u>Item</u> | <u>Description</u> | <u>Page No(s).</u> |
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| H | The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine any proposal used, including the Disclosure Statement and ascertain that they were accurate. | 26 |
| I | The Company violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy, and the notification of replacement to the insurer whose life insurance policy was to be replaced. | 26 |
| J | The Company violated Section 51.7(b) of Department Regulation No. 60 by preventing the orderly working of the Regulation by accepting applications in cases where the Definition of Replacement, Important Notice and/or completed Disclosure Statement were not received by the applicants at or prior to the time that the applications were taken. | 26 |
| K | The Company violated Section 51.6(b)(4) of Department Regulation No. 60 for failing to furnish to the insurer whose coverage was 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 receipt of the application. | 26 |
| L | The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to follow its filed replacement procedures. | 27 |
| M | The examiner recommends that the Company follow its filed procedures to track the sequence of steps that it must follow to comply with Department Regulation No. 60 and to document when those steps are executed in the replacement files. | 27 |
| N | As a result of the aforementioned findings, the Department and the Company have agreed on remediation plans for those policy and contract holders that have been adversely affected. The Company has also developed and started to implement an audit plan designed to review, test, and monitor compliance with the requirements of Department Regulation No. 60. | 27 |
| O | The Company violated Section 3209(b)(1) of the New York Insurance Law for failing to provide the applicant with the most recent buyer's guide at or prior to the time the application was taken for all life insurance policies issued. | 30 |

| <u>Item</u> | <u>Description</u> | <u>Page No(s).</u> |
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| P | The Company violated Section 53-3.1(b) of Department Regulation No. 74 by using Policy form TCL-RT.1(NY) without notifying the Superintendent whether the policy forms were to be marketed with or without an illustration. | 30 |
| Q | The Company violated Section 53-3.1(d) of Department Regulation No. 74 by not preparing and delivering illustrations in six of 50 (12%) underwriting files reviewed. | 30 |
| R | The Company violated Section 53-3.3 (d)(1) of Department Regulation No. 74 by having 11 out of 44 (25%) illustrations that were not signed and dated by the applicant or policyowner. | 30 |
| S | The Company violated Section 53-3.5(c) and Section 53-3.3(d)(2) of Department Regulation No. 74 for failing to make diligent efforts to obtain the signed illustrations or failing to obtain the required agent certifications. | 30 |
| T | The examiner recommends that the Company implement procedures to ensure that the type of sale (whether direct response or agent sale) is clearly identified. | 31 |
| U | The Company violated Section 2611(a) of the New York Insurance Law by requiring individuals proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection. | 31 |
| V | The examiner recommends that the Company take greater care in the preparation of Schedule D, Part 1 in the future. | 32 |
| W | The examiner recommends that the Company verify the fair value on at least a sample of securities where fair value appears to be outside the normal range, and take appropriate action to determine fair value where necessary. | 32 |
| X | The examiner recommends that when it is necessary for a trader to request price quotes, the counterparty be instructed to send the quote directly to the Valuation Unit. | 33 |
| Y | The examiner recommends that when vendors are used for pricing, the Company maintain documentation of such quotes, instead of simply inserting those values in a spreadsheet. | 33 |

APPOINTMENT NO. 22381

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:

MARK MCLEOD

as a proper person to examine into the affairs of the

TIAA-CREF LIFE INSURANCE COMPANY

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 1st day of June, 2005



HOWARD MILLS
Superintendent of Insurance

Howard Mills
Superintendent