



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
AVIVA LIFE AND ANNUITY COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

JUNE 27, 2013

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EXAMINER:

CHONG KIM

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

May 15, 2013

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30806, dated March 2, 2012 and annexed hereto, an examination has been made into the condition and affairs of Aviva Life and Annuity Company of New York, hereinafter referred to as “the Company,” at its home office located at 324 South Service Road, Suite 200, Melville, New York 11747.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

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

1. EXECUTIVE SUMMARY

The material findings, violations, recommendation and comment contained in this report are summarized below.

- On December 21, 2012, Aviva plc, the Company's ultimate parent, announced that it has agreed to sell Aviva USA Corporation, including the Company and its immediate parent Aviva Life and Annuity Company, to Athene Holding Ltd. for \$1.8 billion. (See item 3B of this report)
- The examiner recommends that, for future years, the Company compute reserves based upon appropriate assumptions and methodology in a manner acceptable to the Department. (See item 6F of this report)
- The Company violated Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under treaties that were not duly executed by both parties by the 'as of date' of the financial statement in which credit(s) was taken. This violation appeared in the prior report on examination. (See item 4C of this report)
- The Company violated Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced with 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 and have deficiencies corrected or reject the application when the required forms were not received or the forms did not meet the requirements of Department Regulation No. 60. (See item 7A of this report)
- The Company violated Section 53-3.5(a) of Department Regulation No. 74 by failing to have a copy of the illustration used in the sale of the policy signed by the applicant at the time of application. (See item 7B of this report)
- The Company violated Section 3209(b)(1) of the New York Insurance Law and Sections 53-2.1(c) and 53-2.6(a) of Department Regulation No. 74 by failing to provide prospective applicants with a copy of the preliminary information at or prior to the time an application is taken or by failing to have the preliminary information signed and dated by the agent and the applicant at or prior to the time an application is taken. (See item 7B of this report)

2. SCOPE OF EXAMINATION

The examination of the Company was a full scope examination as defined in the *NAIC Financial Condition Examiners Handbook, 2011 Edition* (the “Handbook”). The examination covers the four-year period from January 1, 2008 to December 31, 2011. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2011 but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

In the course of the examination, a review was also made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The results of this review are contained in item 7 of this report.

The examination was conducted on a risk focused basis in accordance with the provisions of the Handbook published by the National Association of Insurance Commissioners (“NAIC”). The Handbook guidance provides for the establishment of an examination plan based on the examiner’s assessment of risk in the insurer’s operations and utilizing that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate the current financial condition as well as identify prospective risks that may threaten the future solvency of the insurer. The examiner identified key processes, assessed the risks within those processes and evaluated the internal control systems and procedures used to mitigate those risks. The examination also included assessing the principles used and significant estimates made by management, evaluating the overall financial statement presentation, and determining management’s compliance with New York statutes and Department guidelines, Statutory Accounting Principles as adopted by the Department, and annual statement instructions.

Information about the Company’s organizational structure, business approach and control environment were utilized to develop the examination approach. The Company’s risks and management activities were evaluated incorporating the NAIC’s nine branded risk categories. These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic

- Credit
- Market
- Liquidity
- Legal
- Reputational

The Company was audited annually, for the years 2008 through 2011, by the accounting firm Ernst & Young LLP. The Company received an unqualified opinion in all years. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination. Aviva USA Corporation (“Aviva USA”), a parent of the Company, has an internal audit department and a separate internal control department which was given the task of assessing the internal control structure and compliance with the Sarbanes-Oxley Act of 2002 (“SOX”) for both Aviva USA and the Company. Where applicable, SOX workpapers and reports were reviewed and portions were relied upon for this examination.

The examiner reviewed the corrective actions taken by the Company with respect to the violations and recommendations contained in the prior report on examination. The results of the examiner’s review are contained in item 8 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 the State of New York on April 17, 1958, and was licensed and commenced business on November 25, 1958, under the name Gotham Life Insurance Company of New York. Initial resources of \$650,000, consisting of common capital stock of \$300,000 and paid in and contributed surplus of \$350,000, were provided through the sale of 3,000 shares of common stock (with a par value of \$100 each) for \$216.67 per share. In 1979, the Company changed its name to Bankers Life and Casualty Company of New York. In March 1994, the Company changed its name to Bankers Life Insurance Company of New York. In July 1995, Indianapolis Life Insurance Company (“ILICO”) purchased the Company from Southwestern Life Insurance Company. In 1998, the Company became a subsidiary of the Indianapolis Life Group of Companies (“IL Group”), which was the downstream holding company of ILICO. On May 18, 2001, ILICO became a wholly owned subsidiary of AmerUs Group Co. (“AGC”). AGC was the successor company resulting from a merger between American Mutual Holding Company and its subsidiary, AmerUs Life Holdings, Inc., following American Mutual Holding Company’s demutualization in September 2000. On March 5, 2002, IL Group was dissolved and all of the Company’s shares reverted to ILICO which became the Company’s immediate parent and AGC became the Company’s ultimate parent. On November 15, 2006, AGC merged with Libra Acquisition Corporation, an Iowa corporation and an indirect wholly owned subsidiary of Aviva plc, a public limited company incorporated under the laws of England and Wales. AGC continued after the merger as the surviving corporation and an indirect wholly owned subsidiary of Aviva plc.

On December 31, 2007, ILICO acquired Aviva Life Insurance Company of New York (“ALICNY”), a New York domestic life insurance company. Immediately following that acquisition ALICNY was merged with and into the Company with Bankers Life Insurance Company of New York (“BLNY”) being the surviving entity. Simultaneously with the merger, BLNY was renamed Aviva Life and Annuity Company of New York.

Effective January 1, 2008, AGC merged with Aviva USA Corporation, a non-life insurance company incorporated in the State of Delaware. AGC, incorporated in the State of

Iowa, continued as the surviving company and simultaneously changed its name to Aviva USA. Effective September 30, 2008, Aviva Life Insurance Company (“ALIC”), a Delaware domiciled insurance company in the Aviva holding company system, and ILICO, the Company’s immediate parent, were merged with and into Aviva Life and Annuity Company (“ALAC”), an insurer domiciled in Iowa, and ALAC became the Company’s immediate parent.

The Company received \$15,000,000 and \$25,000,000 in capital contributions from its parent during 2009 and 2008, respectively. Capital and paid in and contributed surplus were \$2,002,306 and \$133,975,196, respectively, as of December 31, 2011.

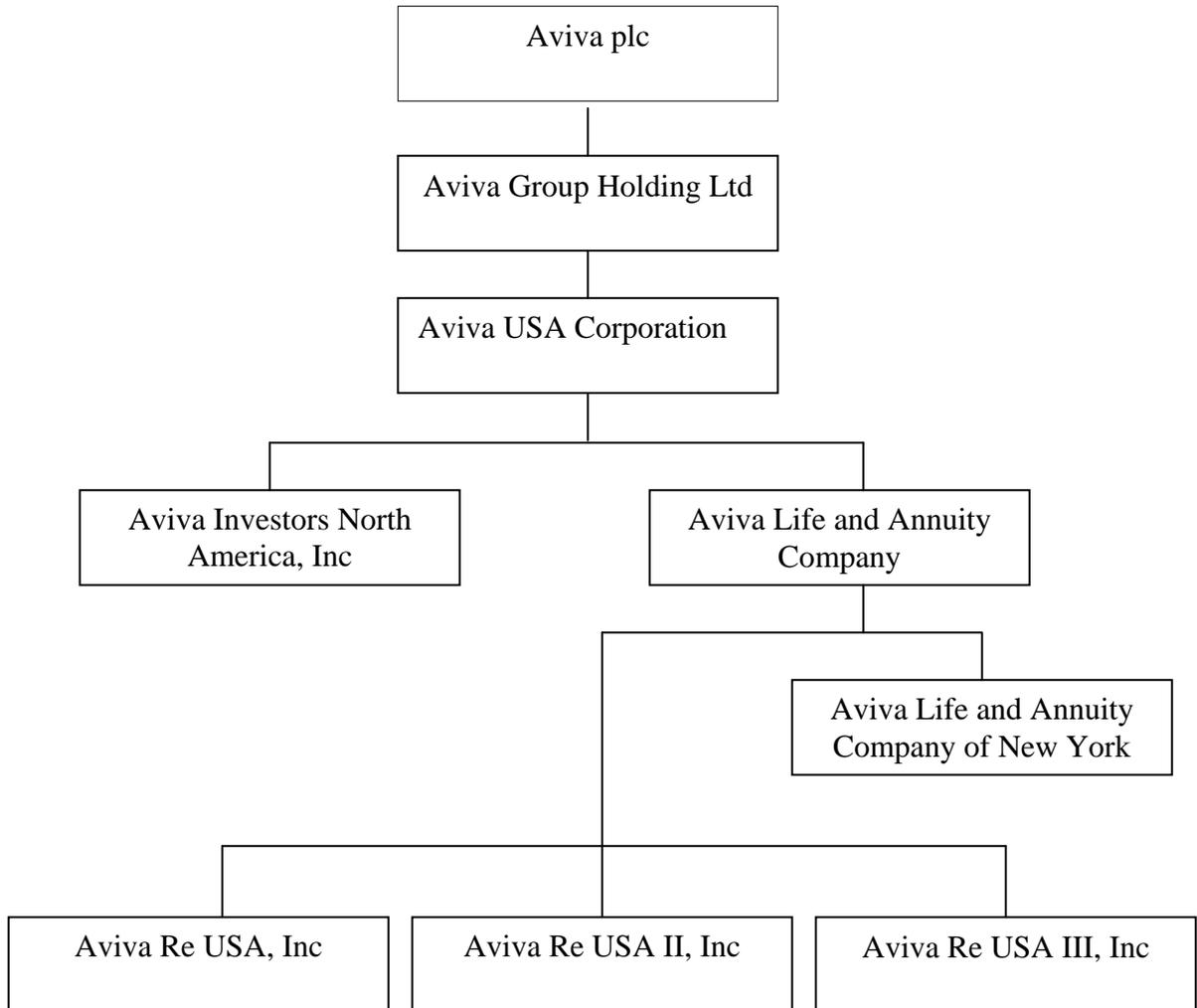
B. Holding Company

The Company is a wholly owned subsidiary of ALAC, a stock life insurance company domiciled in the State of Iowa. ALAC is in turn a wholly owned subsidiary of Aviva USA, a stock life insurance company domiciled in the State of Iowa. The ultimate parent of the Company is Aviva plc, a public limited company incorporated under the laws of England and Wales.

Subsequent to the examination period, on December 21, 2012, Aviva plc announced that it has agreed to sell Aviva USA to Athene Holding Ltd. for \$1.8 billion. The sale is expected to be completed in 2013.

C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2011 follows:



D. Service Agreements

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

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Investment Advisory Agreement Department File No. 27513	02/18/00 Terminated 09/01/10	AmerUS Capitol Management Group, Inc.	The Company	Investment advisory services	2008: \$ (1,415,642) 2009: \$ (2,204,992) 2010: \$ (1,555,757) 2011: \$ 0
Investment Advisory Agreement Department File No. 43135	09/01/10	Aviva Investors North America, Inc	The Company	Investment advisory services	2008: \$ 0 2009: \$ 0 2010: \$ (729,035) 2011: \$ (2,046,731)
Administrative Services Department File No. 37468	01/01/08	Aviva USA	The Company	Full range of services including: finance, legal, actuarial, marketing, administrative, etc.	2008: \$(17,960,769) 2009: \$(18,736,196) 2010: \$(19,479,772) 2011: \$(19,329,171)

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

The Company filed its federal income tax return on a consolidated basis with other members of its holding company system.

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

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

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

Section 8.04 - Computer Terminal and Electronic Access - of the administrative service agreement states, in part:

“In addition to the foregoing, a computer terminal, which is linked to the electronic system that generates the electronic records that constitute Service Recipient’s books of account, shall be kept and maintained at Service Recipient’s principal office in New York. During all normal business hours, there shall be ready availability and easy access through such terminal (either directly by New York Insurance Department personnel or indirectly with the aid of Service Recipient’s officer) to the electronic media used to maintain records comprising Service Recipient’s books of account. The electronic records shall be in a readable form . . .”

During the on-site visit, the examiner requested access to the computer terminal linked to the computer system that generates the electronic records that constitute the Company’s books of account. In accordance with the approved administrative service agreement with Aviva USA, such computer terminal is required to be kept and maintained at the Company’s home office. The Company advised the examiner that the accounting records are maintained in electronic format on CDs. The Company did not maintain a computer terminal which could be used to provide ready availability and easy access to the electronic media used to maintain the records comprising the Company’s books of account at the Company’s home office.

The Company violated Section 1505(d)(3) of the New York Insurance Law by failing to maintain a computer terminal, in accordance with the service agreement approved by the Department, which is linked to the electronic system that generates the electronic records that constitute the Company’s books of account, at its principal office in New York.

On October 26, 2012, the Company provided a network drive accessible from its principle office in New York providing access to its books of account.

E. Management

The Company’s by-laws provide that the board of directors shall be comprised of not less than seven and not more than 13 directors. Directors are elected for a period of one year until their successor is duly elected and qualified at the annual meeting of the stockholders held in May of each year. As of December 31, 2011, the board of directors consisted of nine members. Meetings of the board are held annually. Special meetings may be called and held from time to time by written notice not less than five days before the meeting.

The nine board members and their principal business affiliation, as of December 31, 2011, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
David A. Arledge* Naples, FL	Chairman of the Board Enbridge, Inc.	2003
James M. Benson* Southborough, MA	President and Chief Executive Officer Benson Botsford, LLC	2011
Siobhan G. Boylan Chicago, IL	Executive Vice President and Chief Financial Officer Aviva USA	2011
Philip L. Bullen* Manchester, NY	Director Battery Global Advisors	2011
Brenda J. Furlong* Manchester, NY	Director Bruker Corporation	2011
Richard Hoskins Chicago, IL	Chief Executive Officer Aviva USA	2010
Barry Jacobson* Simsbury, NY	Teacher Simsbury High School	2011
Christopher J. Littlefield Waukee, IA	President and Chief Executive Officer Aviva Life and Annuity Company of New York	2008
Heidi L Steiger* Tuxedo Park, NY	President Lowenhaupt Global Advisors	2006

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

In June, 2012, Richard Hoskins resigned from the board. In July, 2012, Siobhan G. Boylan resigned from the Board. The two open positions have not yet been filled.

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, 2011:

<u>Name</u>	<u>Title</u>
Christopher J. Littlefield	President and Chief Executive Officer
Christopher Welp	Executive Vice President
Maureen Drummond-Closson	Senior Vice President
Michael Miller	Senior Vice President
Ronald Bailey	Vice President
Christopher Guttin	Vice President
William Heng	Vice President
Brenda Cushing	Treasurer
Richard Cohan Jr.	Secretary

Blaine Doerrfeld, Vice President, is the Company's designated consumer services officer per Section 216.4(c) of Department Regulation No. 64.

4. TERRITORY AND PLAN OF OPERATIONS

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 17 states. In 2011, 93.8% of life premiums, 98.1% of accidental and health premiums, 64.7% of annuity considerations and 86.3% of deposit type funds were received from New York. Policies are written on a non-participating basis.

A. Statutory and Special Deposits

As of December 31, 2011, the Company had \$5,100,000 (par value) of United States Treasury Bonds on deposit with the State of New York, its domiciliary state, for the benefit of all policyholders, claimants and creditors of the Company. As per confirmations received from the following states which were reported in Schedule E of the 2011 filed annual statement, an additional \$520,000 was being held by the States of Massachusetts and North Carolina.

B. Direct Operations

The Company primarily sells individual life products. During the examination period the product portfolio included term life, interest sensitive whole life, universal life, fixed indexed universal life, adjustable universal life, structured settlements and both single premium and flexible premium fixed interest annuities. The Company discontinued their structured settlement business in 2009 and that business is now in run-off. The Company also decreased the sale of annuities during the examination period. In addition, the Company has a small block of accident and health policies in-force which consists of disability and long term nursing care policies which were not actively written during the examination period.

The Company's focus is on the sale of its individual life products. The Company primarily sold fixed indexed universal life policies which comprised approximately 77% of life premiums in 2011.

The Company markets its products to middle and high income individuals and business owners. In 2008, the Company's primary distribution channel was through brokerage general

agents and bank platform distribution. In addition, a structured settlement distribution channel was used for structured settlement cases. In 2009 through 2011, the Company's primary distribution channel was through brokerage general agents. Agents are appointed and contracted with the Company but are otherwise non-affiliated.

C. Reinsurance

As of December 31, 2011, the Company had reinsurance treaties in effect with 28 companies, of which 21 were authorized or accredited. The Company's life and accident and health business is reinsured on a coinsurance, modified-coinsurance, and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$10,000,000. The total face amount of life insurance ceded as of December 31, 2011, was \$19,825,010,296, which represents 82% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$171,916,154, was supported by letters of credit and trust agreements.

The total face amount of life insurance assumed as of December 31, 2011, was \$102,594,889. The Company did not enter into any new assumed treaties during the examination period.

The Company entered into a reinsurance agreement on April 1, 2010 with Aviva Re USA II, Inc ("Aviva Re II"), an unauthorized affiliated reinsurer domiciled in the State of Vermont. Under the agreement, the Company ceded, through coinsurance and modified coinsurance, all single and joint-life universal life with no-lapse guarantee policies underwritten and issued by the Company during 2009. The agreement also covers 10, 20, and 30 year level term policies issued from August 18, 2008 through December 31, 2009. The agreement was approved by the Department on August 8, 2010.

The Company entered into a reinsurance agreement on April 1, 2011 with Aviva Re USA III, Inc ("Aviva Re III"), an unauthorized affiliated reinsurer domiciled in the State of Vermont. Under the agreement, the Company ceded, through coinsurance and modified coinsurance, all single and joint-life universal life with no-lapse guarantee policies underwritten and issued by the Company during 2010 through 2012. The agreement also covers 10, 20, and 30 year level

term policies issued during 2010 through 2012. The agreement was approved by the Department on August 2, 2011.

Section 127.3(a) of Department Regulation No. 102 states:

“No reinsurance agreement or amendment to an agreement may be used to take reserve credit by reducing a liability or by establishing an asset in any financial statement filed with the superintendent, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the ‘as of date’ of the financial statement.”

A review of the 18 treaties that came into effect during the examination period revealed that two of the treaties were not executed by both parties of the contract by the “as of date” of the first financial statement in which reserve credits were taken for those contracts. One treaty, which was effective April 1, 2009, was not executed by either party until September 2012 but the Company took reserve credit for it in its 2009 and 2010 filed annual statements. Another treaty, which was effective August 16, 2010, was not executed by either party until May, 2011 but the Company took reserve credit for it in its 2010 filed annual statement.

The Company violated Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under treaties that were not duly executed by both parties by the ‘as of date’ of the financial statement in which credit(s) was taken. This violation appeared in the prior report on examination.

The Company executed the two reinsurance treaties for which reserve credits were taken during the examination period.

The examiner recommends that the Company initiate procedures to ensure that reinsurance agreements and any amendments thereto are properly signed by both parties by the ‘as of date’ of the financial statement in which credit(s) is taken. This recommendation appeared in the prior report on examination.

5. 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, <u>2007</u>	December 31, <u>2011</u>	Increase (Decrease)
Admitted assets	<u>\$1,335,949,888</u>	<u>\$1,588,452,757</u>	<u>\$252,502,869</u>
Liabilities	<u>\$1,245,524,419</u>	<u>\$1,471,520,037</u>	<u>\$225,995,618</u>
Common capital stock	\$ 2,002,306	\$ 2,002,306	\$ 0
Gross paid in and contributed surplus	93,975,196	133,975,196	40,000,000
Deferred Tax Asset Benefit	0	5,000,000	5,000,000
Group Life Contingency Reserve	31,436	31,436	0
Unassigned funds (surplus)	<u>(5,583,469)</u>	<u>(24,076,219)</u>	<u>(18,492,750)</u>
Total capital and surplus	<u>\$ 90,425,469</u>	<u>\$ 116,932,720</u>	<u>\$ 26,507,251</u>
Total liabilities, capital and surplus	<u>\$1,335,949,888</u>	<u>\$1,588,452,757</u>	<u>\$252,502,869</u>

The Company's invested assets as of December 31, 2011 were mainly comprised of bonds (88.7%) and mortgage loans (6.6%).

The majority (97.8%) of the Company's bond portfolio, as of December 31, 2011, was comprised of investment grade obligations.

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>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Ordinary:				
Life insurance	\$ 5,034,860	\$ (3,210,360)	\$14,717,635	\$25,457,135
Individual annuities	1,372,076	(2,456,887)	5,243,087	(7,599,998)
Supplementary contracts	<u>(5,952,173)</u>	<u>(913,195)</u>	<u>(1,178,234)</u>	<u>12,248,783</u>
Total ordinary	\$ <u>454,763</u>	\$ <u>(6,580,442)</u>	\$ <u>18,782,488</u>	\$ <u>30,105,920</u>
Group:				
Life	\$ (960,452)	\$ (3,366,902)	\$ (9,334,989)	\$ (8,603,776)
Annuities	<u>(8,413)</u>	<u>(5,558)</u>	<u>(28,109)</u>	<u>(341,916)</u>
Total group	\$ <u>(968,865)</u>	\$ <u>(3,372,460)</u>	\$ <u>(9,363,098)</u>	\$ <u>(8,945,692)</u>
Accident and health:				
Other	<u>(23,622)</u>	<u>(558,700)</u>	<u>(316,300)</u>	<u>153,337</u>
Total accident and health	\$ <u>(23,622)</u>	\$ <u>(558,700)</u>	\$ <u>(316,300)</u>	\$ <u>153,337</u>
Total	\$ <u>(537,722)</u>	\$ <u>(10,511,603)</u>	\$ <u>9,103,088</u>	\$ <u>21,313,566</u>

The loss on ordinary life insurance was due to an increase in aggregate reserve of \$13.8 million. The increase in reserve of \$4.2 million was from the aging of the in force business and modest life sales growth, and the increase in reserve of \$8.6 million as a result of not reinsuring the Universal Life with No-Lapse Guarantee product in 2009 which was reinsured in 2008.

The increase in ordinary life insurance gain from 2009 to 2010 was due to a decrease in the death benefits of \$8.7 million and a decrease in life aggregate reserves of \$2.7 million.

The increase in ordinary life insurance gain from 2010 to 2011 was due to a decrease of life aggregate reserves of \$18.2 million from 2010 to 2011. The decrease was primarily due to the reinsurance agreements with Aviva Re II and Aviva Re III to cede all single and joint life "Universal Life with No Lapse Guaranteed" policies.

The 2009 loss on ordinary annuities was due to a decrease in premiums of \$42.5 million which was due to the decreased sales of ordinary annuities and the Company's withdrawal from the structured settlement market in December, 2008.

The 2011 loss on ordinary annuities was due to a reclassifying the reserves of \$11.0 million from supplementary contracts to single premium individual annuities.

The Company's group life net losses for the during the examination period were primarily due to an increase in death benefits during the exam period. In 2010, the Company had a higher net loss than the prior year due to an increase of \$6.3 million in death benefits.

6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2011, as contained in the Company's 2011 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, 2011 filed annual statement.

A. Independent Accountants

The firm of Ernst & Young, LLP was retained by the Company to audit the combined statutory basis statements of financial position of the Company as of December 31st of each year in the examination period, and the related statutory-basis statements of operations, capital and surplus, and cash flows for the year then ended.

Ernst & Young, LLP concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Company at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

Subsequent to the examination period, in 2012, the Company changed its independent auditor to PricewaterhouseCoopers, LLP.

B. Net Admitted Assets

Bonds	\$1,365,986,144
Stocks:	
Preferred stocks	7,630
Common stocks	4,745,569
Mortgage loans on real estate:	
First liens	101,101,699
Cash, cash equivalents and short term investments	32,146,233
Contract loans	29,405,424
Derivatives	6,927,531
Investment income due and accrued	19,081,031
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	(11,403,829)
Deferred premiums, agents' balances and installments booked but deferred and not yet due	4,961,077
Reinsurance:	
Amounts recoverable from reinsurers	7,127,489
Other amounts receivable under reinsurance contracts	13,096,759
Net deferred tax asset	15,000,000
Guaranty funds receivable or on deposit	<u>270,000</u>
Total admitted assets	<u>\$1,588,452,757</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$1,272,822,196
Aggregate reserve for accident and health contracts	3,759,474
Liability for deposit-type contracts	137,326,989
Contract claims:	
Life	10,331,081
Accident and health	73,601
Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts:	
Dividends apportioned for payment	702,797
Premiums and annuity considerations for life and accident and health contracts received in advance	298,970
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	3,278,005
Interest maintenance reserve	12,025,901
Commissions to agents due or accrued	67,296
Taxes, licenses and fees due or accrued, excluding federal income taxes	482,000
Unearned investment income	844,274
Amounts withheld or retained by company as agent or trustee	42,603
Amounts held for agents' account	301,079
Remittances and items not allocated	5,091,195
Liability for benefits for employees and agents if not included above	4,739,743
Asset valuation reserve	5,104,109
Reinsurance in unauthorized companies	5,618,132
Payable to parent, subsidiaries and affiliates	1,537,985
Derivative collateral	4,256,000
Unclaimed funds	1,616,607
Guaranty fund liabilities	<u>1,200,000</u>
 Total liabilities	 <u>\$1,471,520,037</u>
 Common capital stock	 \$ 2,002,306
Deferred tax asset benefit	5,000,000
Gross paid in and contributed surplus	133,975,196
Group life contingency reserve	31,436
Unassigned funds (surplus)	<u>(24,076,219)</u>
Surplus	\$ <u>114,930,414</u>
Total capital and surplus	\$ <u>116,932,720</u>
 Total liabilities, capital and surplus	 <u>\$1,588,452,757</u>

D. Condensed Summary of Operations

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Premiums and considerations	\$126,436,423	\$ 93,585,249	\$ 58,348,279	\$ 28,811,151
Investment income	72,706,656	77,484,002	91,557,894	90,939,230
Commissions and reserve adjustments on reinsurance ceded	28,243,070	13,932,140	33,127,923	63,239,711
Miscellaneous income	<u>244,086</u>	<u>182,853</u>	<u>42,007</u>	<u>50</u>
 Total income	 <u>\$227,630,235</u>	 <u>\$185,184,244</u>	 <u>\$183,076,103</u>	 <u>\$182,990,142</u>
 Benefit payments	 \$111,461,889	 \$ 98,668,116	 \$ 86,552,386	 \$ 99,012,285
Increase in reserves	78,182,204	52,864,409	46,449,400	27,453,079
Commissions	15,091,831	12,394,809	12,404,041	10,416,647
General expenses and taxes	24,837,623	28,491,127	28,130,199	27,081,625
Increase in loading on deferred and uncollected premiums	27,407	291,225	766,293	55,471
Miscellaneous deductions	<u>85,435</u>	<u>1,636,896</u>	<u>(948,635)</u>	<u>7,495</u>
 Total deductions	 <u>\$229,686,389</u>	 <u>\$194,346,582</u>	 <u>\$173,353,684</u>	 <u>\$164,026,602</u>
 Net gain (loss)	 \$ (2,056,154)	 \$ (9,162,338)	 \$ 9,722,419	 \$ 18,963,540
Dividends	621,743	613,815	619,333	601,974
Federal and foreign income taxes incurred	<u>(2,140,174)</u>	<u>735,450</u>	<u>0</u>	<u>(2,952,000)</u>
 Net gain (loss) from operations before net realized capital gains	 \$ (537,722)	 \$ (10,511,603)	 \$ 9,103,088	 \$ 21,313,566
Net realized capital gains (losses)	<u>(22,335,766)</u>	<u>(8,322,999)</u>	<u>6,401,355</u>	<u>1,145,622</u>
 Net income	 <u>\$ (22,873,488)</u>	 <u>\$ (18,834,602)</u>	 <u>\$ 15,504,443</u>	 <u>\$ 22,459,188</u>

In 2010, the increase in net investment income was mainly due to the increases of bond income by \$1.9 million, mortgage loan income by \$4.9 million, and derivative income by \$4.1 million. The other contributing factors were a decrease in benefit payments which was primarily due to a \$7.8 million decrease in surrenders in 2010, and a decrease in aggregate reserves of \$6.4 million in 2010.

In 2010 and 2011, the decrease in premiums and considerations was mainly due to an increase in ordinary life insurance premiums ceded. The Company entered into reinsurance agreements with Aviva Re II and Aviva III to cede all single and joint life “Universal Life with No Lapse Guaranteed” policies. As a result of the reinsurance agreements, the Company had increases in reserve adjustments for reinsurance ceded and decreases in aggregate reserves in 2010 and 2011.

E. Capital and Surplus Account

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Capital and surplus, December 31, prior year	\$ <u>90,425,469</u>	\$ <u>80,409,564</u>	\$ <u>98,156,342</u>	\$ <u>108,126,894</u>
Net income	\$(22,873,488)	\$(18,834,602)	\$ 15,504,443	\$ 22,459,188
Change in net unrealized capital gains (losses)	(3,847,328)	6,543,150	221,224	(4,075,508)
Change in net deferred income tax	10,236,234	(3,748,188)	(3,655,114)	(4,054,599)
Change in non-admitted assets and related items	(21,133,093)	15,154,721	624,894	3,403,451
Change in liability for reinsurance in unauthorized companies	(1,976,555)	3,531,598	373,157	(5,605,826)
Change in asset valuation reserve	7,644,682	(1,557,978)	(3,529,376)	572,185
Cumulative effect of changes in accounting principles	0	0	0	(4,505,638)
Surplus adjustments:				
Paid in	25,000,000	15,000,000	0	0
Deferred tax benefit	0	6,500,000	(2,000,000)	500,000
Reinsurance adjustment per A-791	<u>(3,066,353)</u>	<u>(4,841,925)</u>	<u>2,431,323</u>	<u>112,573</u>
Net change in capital and surplus for the year	\$(<u>10,015,903</u>)	\$ <u>17,746,776</u>	\$ <u>9,970,551</u>	\$ <u>8,805,826</u>
Capital and surplus, December 31, current year	\$ <u>80,409,564</u>	\$ <u>98,156,342</u>	\$ <u>108,126,894</u>	\$ <u>116,932,720</u>

In 2009, the Company had an increase in capital and surplus of \$17.7 million from the prior year. The increase was due to changes in unrealized capital gains of \$6.5 million, changes in non-admitted assets related items of \$15.1 million, and deferred tax benefit of \$6.5 million. The change in unrealized capital gains was primarily due to \$7.0 million of unrealized gains from derivatives, the change in non-admitted assets was primarily due to a \$18.3 million change in net deferred tax asset, and the increase of deferred tax benefits was primarily due to the adoption of Statutory Accounting Principle No. 10R, effective January 1, 2009, which impacted the admitted deferred tax asset in 2009. In 2008 and 2009, the Company received \$25.0 million and \$15.0 million in capital contributions from its parent, respectively.

F. Reserves

The Department conducted in-depth reviews of reserves as of December 31, 2011 and December 31, 2012. During these reviews, the Department found that greater conservatism is needed in the assumptions and methodology used for future asset adequacy analysis pursuant to Department Regulation No. 126.

In response, the Company revised various assumptions and methodology in 2013, leading to an additional reserve in 2013 in the amount of \$117,000,000 beyond the \$40,000,000 additional reserves that the Company already established in 2012 based on the December 31, 2012 asset adequacy analysis. The Company agreed to establish reserves in the amount of \$117,000,000 with \$58,500,000 to be posted in the Company's 2013 third quarter statement and \$58,500,000 being established within two days after the closing of the Company's pending acquisition.

The examiner recommends that, for future years, the Company compute reserves based upon appropriate assumptions and methodology in a manner acceptable to the Department.

7. MARKET CONDUCT ACTIVITIES

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

A. Advertising and Sales Activities

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

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

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

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed “Disclosure Statement” . . .

(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 therefor. . . .”

The examiner reviewed 58 incoming life replacements that were processed during the examination period. The review revealed that 11 (19%) of the replacements contained an error or omission which violated Department Regulation No. 60. In some instances, the examiner found more than one error or omission related to a single replacement.

The errors and omissions discovered during the review were as follows:

1) In seven (12.1%) instances the Company took longer than ten days of receipt of the application to furnish the insurer whose coverage was being replaced with a copy of the proposal, including sales material used in the sale of the proposed life insurance policy, and the completed Disclosure Statement.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced with 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.

2) In four (6.9%) instances the Company did not have deficiencies corrected or reject the application within ten days from the date of receipt of the application when the required forms did not meet the requirements of the Regulation, or information on the Disclosure Statement was inaccurate.

The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to have deficiencies corrected or reject the application when the required forms were not received or the forms did not meet 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.

Section 3201(a) of the New York Insurance Law states, in part:

“In this article, "policy form" means any policy, contract, certificate, or evidence of insurance and any application therefor, or rider or endorsement thereto . . .”

Section 3201(b)(1) of the New York Insurance Law states, in part:

“No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent . . .”

The examiner reviewed a sample of 80 standard and substandard issued underwriting files of which 30 were term life policies, 40 were non-juvenile universal life policies and ten were juvenile universal life policies.

The review of the 30 term life policies and 40 non-juvenile universal life policies revealed that in seven (10.0%) instances the Company used a paramedical form called “Application for Insurance Medical Examination” which was completed and signed by the applicant. The form was not filed with or approved by the superintendent for use in New York.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form which was not filed with and approved by the superintendent.

Section 2611(a) of the 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.”

The review of the 30 term life policies and 40 non-juvenile universal life policies also revealed that in five (7.1%) instances, the HIV consent form was signed by the applicant after the applicant was tested for HIV.

The Company violated Section 2611(a) of the New York Insurance Law by failing to obtain written informed consent prior to subjecting applicants to HIV related testing.

Section 53-3.5 of Department Regulation No. 74 states, in part:

“(a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed . . . shall be submitted to the insurer at the time of policy application. A copy also shall be provided to

the applicant. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements . . . shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policyowner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.”

Section 3209(b)(1) of the New York Insurance Laws 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:
(A) a copy of the most recent buyer's guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken”

Section 53-2.1(c) of Department Regulation No. 74 states, in part:

“The preliminary information shall be provided to the prospective purchaser at or prior to the time an application is taken and shall be signed and dated by the agent or broker and the applicant and a copy of the preliminary information shall be attached to the application submitted to the insurer”

Section 53-2.6(a) of Department’s Regulation No. 74 states, in part:

“ No life insurance policy shall be delivered or issued for delivery in this state unless the prospective purchaser has been provided a copy of the Life Insurance Buyer's Guide . . . at the time specified by Section 3209(b)(1) of the Insurance Law. . . .”

The examiner’s review of the 40 non-juvenile universal life policies and ten juvenile universal life policies revealed that in six (12.0%) instances the original illustration used in the sale of the universal life policy was not signed by the applicant at the time of policy application.

The Company violated Section 53-3.5(a) of Department Regulation No. 74 by failing to have a copy of the illustration used in the sale of the policy signed by the applicant at the time of application.

In all 30 term life files reviewed, there was no evidence that the preliminary information was provided to the applicant at or prior to the time the application was taken.

The Company violated Section 3209(b)(1) of the New York Insurance Law and Sections 53-2.1(c) and 53-2.6(a) of Department Regulation No. 74 by failing to provide prospective applicants with a copy of the preliminary information at or prior to the time an application is

taken or by failing to have the preliminary information signed and dated by the agent and the applicant at or prior to the time an application is taken.

The examiner recommends that the Company implement a procedure to ensure that the preliminary information is signed and dated by the agent and the applicant at or prior to the time an application is taken.

In all 30 term and all 40 non-juvenile universal life policies reviewed, the examiner was unable to determine that the Buyer's Guide was provided to the applicant.

The examiner recommends that the Company enhance their procedures to ensure that the Buyer's Guide is provided at the time of application and be able to demonstrate this to the Department in the future.

During the current examination, the Company revised its procedures to ensure that agents provide applicants with the New York Life Insurance Buyer's Guide at or prior to the time an application is taken.

C. Treatment of Policyholders

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

Section 86.4(d) of Department Regulation No. 95 states, in part:

“Location of warning statement and type size.

The warning statements required . . . shall be placed immediately above the space provided for the signature of the person executing the application or claim form and shall be printed in type which will produce a warning statement of conspicuous size. . . .”

A review of the life claim forms used by the Company revealed that the claim forms did not have the required fraud warning statement placed immediately above the space provided for the claimant's signature.

The Company violated Section 86.4(d) of Department Regulation No. 95 by not placing the fraud warning statement immediately above the space provided for the signature of the person executing the claim.

During the current examination, the Company revised their life claim forms and placed

the fraud warning statement immediately above the space provided for the signature of the person executing the claim.

Section 216.6(g) of Department Regulation No. 64 states:

“Checks or drafts in payment of claims; releases. No insurer shall issue a check or draft in payment of a first-party claim or any element thereof, arising under any policy subject to this Part that contains any language or provision that expressly or impliedly states that acceptance of such check or draft shall constitute a final settlement or release of any or all future obligations arising out of the loss. No insurer shall require execution of a release on a first- or third-party claim that is broader than the scope of the settlement.”

The examiner reviewed 90 benefit checks. The review revealed that in 46 (51.1%) instances, the Company included the language “IN FULL SETTLEMENT OF ACCOUNT PER STATEMENT” on the benefit checks. This language implies that acceptance of the check constitutes final settlement or release of any future obligations arising out of the loss.

The Company violated Section 216.6(g) of Department Regulation No. 64, by including the language, “IN FULL SETTLEMENT OF ACCOUNT PER STATEMENT” on benefit checks, which implies that acceptance of the check constitutes final settlement or release of any future obligations arising out of the loss.

Although, the Company does not believe the language “IN FULL SETTLEMENT OF ACCOUNT PER STATEMENT” is a release of any future obligations arising out of the loss, the Company removed the language from their life claim benefit checks effective January 24, 2013.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The Company continues to violate Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under reinsurance treaties that were not duly executed by both parties by the “as of date“ of the financial statement in which the credit(s) was taken. This violation appeared in the prior ALICNY report on examination.</p> <p>The Company continues to be in violation of Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under reinsurance treaties that were not duly executed by both parties by the “as of date“ of the financial statement in which the credit(s) was taken.</p>
B	<p>The examiner recommends that the Company immediately initiate procedures to ensure that reinsurance agreements and any amendments thereto are properly signed by both parties by the ‘as of date’ of the financial statement in which credit(s) is taken.</p> <p>The Company continues to be in violation of Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under reinsurance treaties that were not duly executed by both parties by the “as of date“ of the financial statement in which the credit(s) was taken.</p>
C	<p>The Company continues to violate Section 91.5(b) of Department Regulation No. 33 by using methods to allocate net investment income to annual statement lines of business without filing the methods with the Department prior to their use. This violation appeared in the prior report on examination.</p> <p>The Company has filed the methods used to allocate net investment income to annual statement lines of business with the Department.</p>
D	<p>The examiner recommends that the Company immediately initiate procedures to ensure compliance with Section 91.5(b) of Department Regulation No. 33.</p> <p>The Company has filed the methods used to allocate net investment income to annual statement lines of business with the Department.</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 Company violated Section 1505(d)(3) of the New York Insurance Law by failing to maintain a computer terminal, in accordance with the service agreement approved by the Department, which is linked to the electronic system that generates the electronic records that constitute the Company's books of account, at its principal office in New York.	9
B	The Company violated Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under treaties that were not duly executed by both parties by the 'as of date' of the financial statement in which credit(s) was taken. This violation appeared in the prior report on examination.	14
C	The examiner recommends that the Company initiate procedures to ensure that reinsurance agreements and any amendments thereto are properly signed by both parties by the 'as of date' of the financial statement in which credit(s) is taken. This recommendation appeared in the prior report on examination.	14
D	The examiner recommends that, for future years, the Company compute reserves based upon appropriate assumptions and methodology in a manner acceptable to the Department.	24
E	The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced with 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.	25
F	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to have deficiencies corrected or reject the application when the required forms were not received or the forms did not meet the requirements of Department Regulation No. 60.	25
G	The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form which was not filed with and approved by the superintendent.	26

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The Company violated Section 2611(a) of the New York Insurance Law by failing to obtain written informed consent prior to subjecting applicants to HIV related testing.	26
I	The Company violated Section 53-3.5(a) of Department Regulation No. 74 by failing to have a copy of the illustration used in the sale of the policy signed by the applicant at the time of application.	27
J	The Company violated Section 3209(b)(1) of the New York Insurance Law and Sections 53-2.1(c) and 53-2.6(a) of Department Regulation No. 74 by failing to provide prospective applicants with a copy of the preliminary information at or prior to the time an application is taken or by failing to have the preliminary information signed and dated by the agent and the applicant at or prior to the time an application is taken.	27
K	The examiner recommends that the Company implement a procedure to ensure that the preliminary information is signed and dated by the agent and the applicant at or prior to the time an application is taken.	28
L	The examiner recommends that the Company enhance their procedures to ensure that the Buyer's Guide is provided at the time of application and be able to demonstrate this to the Department in the future.	28
M	The Company violated Section 86.4(d) of Department Regulation No. 95 by not placing the fraud warning statement immediately above the space provided for the signature of the person executing the claim.	28
N	The Company violated Section 216.6(g) of Department Regulation No. 64, by including the language, "IN FULL SETTLEMENT OF ACCOUNT PER STATEMENT" on benefit checks, which implies that acceptance of the check constitutes final settlement or release of any future obligations arising out of the loss.	29

Respectfully submitted,

_____/s/_____
Chong Kim
Senior Insurance Examiner

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

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

_____/s/_____
Chong Kim

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30806

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

CHONG KIM

as a proper person to examine the affairs of the

AVIVA LIFE & ANNUITY COMPANY OF NEW YORK

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

COMPANY

with such other information as he shall deem requisite.

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

this 2nd day of March, 2012

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



MICHAEL MAFFEI
ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

