



STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF THE
EMPIRE FIDELITY INVESTMENTS LIFE INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2006

DATE OF REPORT:

MAY 5, 2008

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

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AS OF

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EXAMINER:

BIBI S. ISHAK

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

David A. Paterson
Governor

James J. Wrynn
Superintendent

May 25, 2010

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

Sir:

In accordance with instructions contained in Appointment No. 22665, dated July 16, 2007 and annexed hereto, an examination has been made into the condition and affairs of Empire Fidelity Investments Life Insurance Company, hereinafter referred to as “the Company” or “EFILI,” at its home office located at 200 Liberty Street, One World Financial Center, New York, New York, 10281.

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

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

1. EXECUTIVE SUMMARY

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

- The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to notify the Superintendent in writing of its intention to enter into agreements with an affiliates for the rendering of services on a regular or systematic basis at least thirty days prior to rendering such services. (See item 3B of this report)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by using an application form that was not filed with or approved by the Superintendent. (See item 6B of this report)
- The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management with ongoing assessments of the Company's risk management processes and the accompanying system of internal controls. (See item 7 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2002. This examination covers the period from January 1, 2003 through December 31, 2006. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2006 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2006 to determine whether the Company's 2006 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Company history
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

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

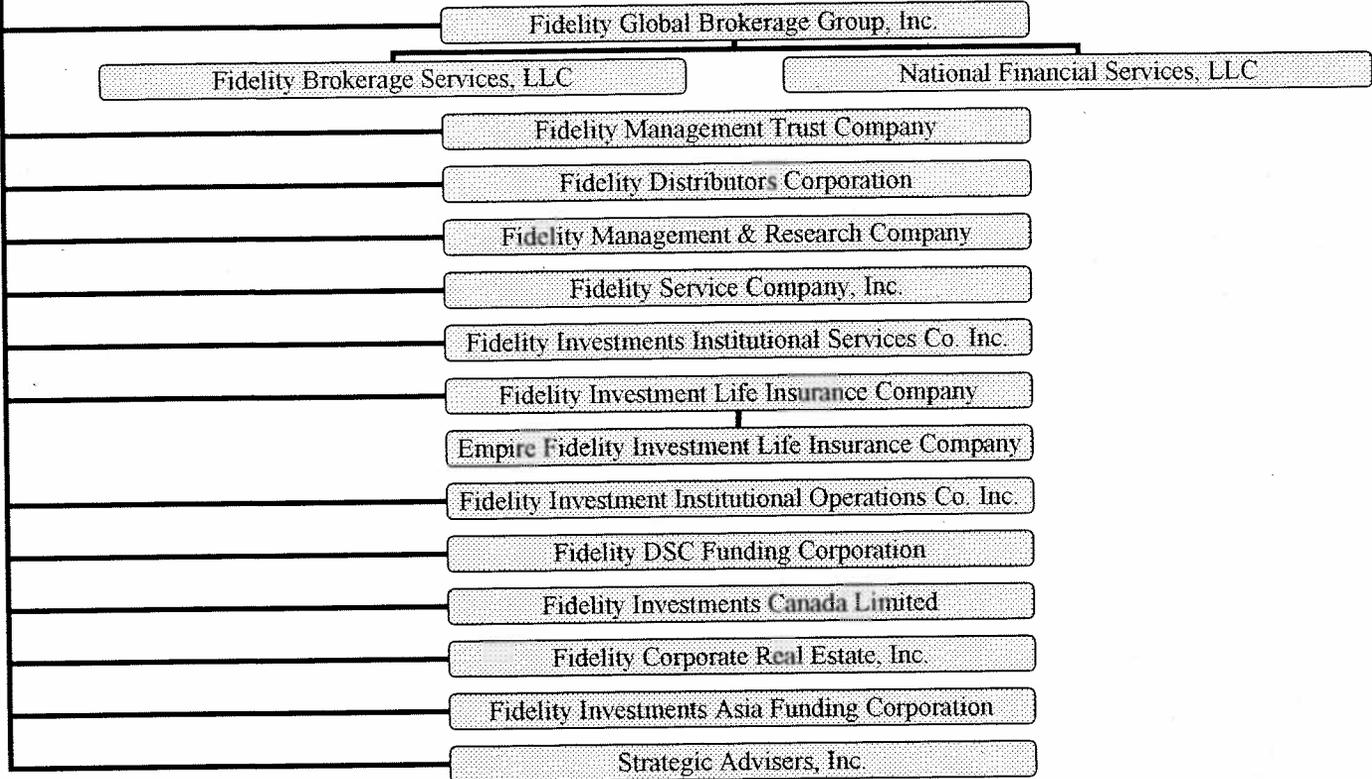
The Company was incorporated as a stock life insurance company under the laws of New York on May 1, 1991, was licensed and commenced business on June 1, 1992. Initial resources of \$7,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$5,000,000, were provided through the sale of 200,000 shares of common stock (with a par value of \$10 each) for \$35 per share.

B. Holding Company

The Company is a wholly owned subsidiary of Fidelity Investments Life Insurance Company ("FILF"), a Utah company. FILF is in turn a wholly owned subsidiary of FMR Corporation ("FMR"), a Massachusetts financial services company. The ultimate parent of the Company is FMR.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2006 follows:

FMR Corporation



The Company had 11 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
Distribution Agreement	10/01/1991	Fidelity Brokerage Services, Inc. ("FBSI") changed to Fidelity Brokerage Services, LLC ("FBS") on 8/28/00 Fidelity Insurance Agency ("FIA")	EFILI	FBSI appointed as principal underwriter, FIA as general agent	2003 \$(1,696,414) 2004 \$(1,343,433) 2005 \$(1,435,122) 2006 \$(1,522,865)
Administrative Services Agreement 17390 Amendment 1 Amendment 2 Amendment 3	03/10/1992 01/01/1993 10/21/1996 10/12/2001	FILI	EFILI	FILI to provide various administrative services and use of facilities to EFILI	2003 \$(2,110,704) 2004 \$(1,813,800) 2005 \$(1,857,529) 2006 \$(2,743,836)
Participation agreements	10/01/1991 and 01/27/1997	Variable Insurance Products Funds I, II and III, Fidelity Distributors Corporation ("FDC")	EFILI	EFILI to participate in the VIP Funds purchasing and redeeming shares for its variable annuity and variable life contracts	2003 n/a 2004 n/a 2005 n/a 2006 n/a

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
Administrative Services Agreement 21675**	10/13/1994	Fidelity Investments Southwest Company ("FISCO")	EFILI	FISCO to print, assemble, mail certain quarterly statements and confirmations relating to EFILI's variable annuity products	2003 \$ 0 2004 \$ 0 2005 \$ 0 2006 \$ 0
Administrative Service Agreement Amendment 1 Amendment 2 Superseded by Dept. file 32457 Amended	12/26/1991 01/01/1993 01/01/1996 08/01/2004 04/01/2005	FMR (including various subsidiaries)	EFILI	Administrative services	2003 \$ (343,460) 2004 \$ (600,542) 2005 \$ (627,267) 2006 \$ (788,107)
Selling Agreement 26299	02/01/1999	EFILI, FBS, FIA	Fidelity Investments Institutional Services Company ("FIIS")	FIIS is appointed and authorized to sell EFILI's annuity contracts	2003 n/a 2004 n/a 2005 n/a 2006 n/a
Distribution Agreement 24084 Amendment	09/15/1996 04/15/2002	FIA	EFILI	FIA appointed EFILI's independent general agent for sales of EFILI's annuity and life policies, other than variable life and variable annuity	2003 \$ (410,240) 2004 \$ (425,610) 2005 \$ (473,609) 2006 \$ (583,789)

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
Service Contract Amendment	10/01/2005 01/31/2006	EFILI	FDC	EFILI provides variable product fund transfer agent services to FDC in exchange for a service fee.	2003 n/a 2004 n/a 2005 \$ 2,417 2006 \$ 141,612
Sublease Agreement 33483***	04/01/2005	NFS	EFILI	Lease of office space	2003 n/a 2004 n/a 2005 \$ 0 2006 \$ 0
Separate Account Services Agreement	08/15/2005	EFILI	Fidelity Investments Institutional Operations Company, Inc. (FIIOC)	EFILI provides variable product fund administrative services to FIIOC in exchange for a service fee.	2003 n/a 2004 n/a 2005 \$ 8,159 2006 \$ 267,929
Investment Management Agreement 24845	07/11/1997	Fidelity Management Trust Company	EFILI	Investment advice and management	2003 \$ (229,490) 2004 \$ (234,074) 2005 \$ (236,576) 2006 \$ (227,554)

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

**Services are no longer provided by FISCO; the agreement has been terminated.

***Due to an oversight, NFS did not bill the Company for rent. This oversight was corrected in April 2008.

The Company participates in a tax allocation agreement with its parent wherein it files a consolidated tax return.

The examiner recommends that the Company withdraw Administrative Services Agreement, file number 21675, between the Company and FISCO because the services are no longer being provided.

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 . . .”

The Company has a service agreement with Fidelity Investments Institutional Operations Company, Inc. (FIIOC) effective August 15, 2005. The agreement provides that the Company shall open and maintain separate accounts in its name on the books and records of FIIOC and provide reporting and administrative services to FIIOC clients who own variable life insurance or variable annuity contracts issued by the Company. The Company did not file the service agreement with the Superintendent.

The Company also has a service agreement with Fidelity Distributors Corporation whereby the Company provides variable product fund transfer agent services to FDC in exchange for a service fee. The Company did not file this service agreement with the Superintendent.

The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to notify the Superintendent in writing of its intention to enter into agreements with affiliates for the rendering of services on a regular or systematic basis at least thirty days prior to rendering such services.

The examiner recommends that the Company file the above service agreements with the Superintendent to cover the services provided to FIIOC and FDC.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 9 members. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 31, 2006, the board of directors consisted of 11 members. Meetings of the board are held quarterly.

The 11 board members and their principal business affiliation, as of December 31, 2006, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Alan J. Brandon Holmdel, NJ	Vice President Empire Fidelity Investments Life Insurance Company	1998
Albert Francke* Millerton, NY	Retired Attorney	2000
Lena G. Goldberg Cohasset, MA	Executive Vice President FMR Corporation	1997
Peter G. Johannsen* Wellesley, MA	Partner Sullivan & Worcester	1991
Malcolm MacKay* New York, NY	Managing Director Russell Reynolds Associates	1991
Clare S. Richer Southborough, MA	Chief Financial Officer FMR Corporation	2004
Rodney R. Rohda Waban, MA	Retired Formerly Chairman and Chief Executive Officer Fidelity Investments Life Insurance Company	1991
Jon J. Skillman Weston, MA	President Empire Fidelity Investments Life Insurance Company and Fidelity Investments Life Insurance Company	2005
Floyd L. Smith* New York, NY	Retired Formerly Vice Chairman and Director Mutual of New York Life Insurance Company	1993
Roger T. Servison Brookline, MA	President Strategic New Business Development FMR Corporation	2005
Richard A. Spillane, Jr. Wellesley, MA	Senior Vice President FMR Corporation	2000

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

Jeffrey R. Carney was elected as a director in July 2007 and resigned on July 31, 2007.
In November, 2007, Kathleen Graveline was elected as a director.

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, 2006:

<u>Name</u>	<u>Title</u>
Jon J. Skillman	President
Jeffrey K. Cimini	Executive Vice President, Sales
William J. Johnson Jr.	Executive Vice President and Actuary
David A. Golino	Chief Financial Officer and Treasurer
David W. Morse	Senior Vice President, Client Services
Joan M. Bloom	Senior Vice President, Marketing
Paul J. Vancheri	Senior Vice President, Systems & Technology
Felicia F. Tierney	Vice President, Human Resources
Brian N. Leary*	Chief Compliance Officer
David J. Pearlman	Vice President and Secretary

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

D. Territory and Plan of Operation

The Company is authorized to write life insurance, 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 only in New York. In 2006, 100% of life premiums, annuity considerations and deposit type funds were received from New York. Policies are written on a non-participating basis. The principal line of business sold during the period under examination was individual annuities. The Company was engaged in the sale of the following products: Personal Retirement Reserves (a variable deferred annuity), Guaranteed Income Annuity (a fixed immediate annuity), Income Advantage (a variable income annuity),

and Term Life. The type of products sold during the examination period were: Variable Deferred Annuity, Fixed Income Immediate Annuity, Variable Immediate Annuity and Indeterminate Premium Term Life. The Company launched two new low cost variable annuity products, a deferred variable annuity (Personal Retirement Annuity), and a variable immediate annuity (Freedom Lifetime Income Annuity) to strengthen its product offerings during late 2005. The Company also launched a variable universal life insurance product in 2006.

The Company sells its products through distribution agreements with FBS and FIA; both are subsidiaries of FMR, the ultimate parent. These affiliates operate nationwide telephone centers as well as local branches (Investor Centers), which work together to provide sales and service to customers.

E. Reinsurance

As of December 31, 2006, the Company had 13 reinsurance treaties in effect with 7 companies, all of which were authorized or accredited. The Company's life business is reinsured on a coinsurance basis. Reinsurance is provided on an automatic and or facultative basis.

The maximum retention limit for individual life contracts is \$100,000. The total face amount of life insurance ceded as of December 31, 2006, was \$744,256,138, which represents 83.54% of the total face amount of life insurance in force.

The Company did not assume any insurance during the period under examination.

4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth during the period under review:

	<u>December 31,</u> <u>2002</u>	<u>December 31,</u> <u>2006</u>	<u>Increase</u>
Admitted assets	<u>\$939,751,856</u>	<u>\$1,353,080,565</u>	<u>\$413,328,709</u>
Liabilities	<u>\$909,494,129</u>	<u>\$1,303,779,340</u>	<u>\$394,285,211</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	13,500,000	13,500,000	0
Unassigned funds (surplus)	<u>14,757,727</u>	<u>33,801,225</u>	<u>19,043,498</u>
Total capital and surplus	<u>\$ 30,257,727</u>	<u>\$ 49,301,225</u>	<u>\$ 19,043,498</u>
Total liabilities, capital and surplus	<u>\$939,751,856</u>	<u>\$1,353,080,565</u>	<u>\$413,328,709</u>

The majority (94.46%) of the Company's admitted assets, as of December 31, 2006, was derived from Separate Accounts.

The Company's invested assets as of December 31, 2006, exclusive of separate accounts, were mainly comprised of bonds (98.04%). The Company's entire bond portfolio, as of December 31, 2006, 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>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Ordinary:				
Life insurance	\$ 169,173	\$ 247,581	\$ (69,410)	\$ 407,638
Individual annuities	<u>4,405,026</u>	<u>5,492,961</u>	<u>5,624,108</u>	<u>3,832,442</u>
Total	<u>\$4,574,199</u>	<u>\$5,740,542</u>	<u>\$5,554,698</u>	<u>\$4,240,080</u>

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2006, as contained in the Company's 2006 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, 2006 filed annual statement.

A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2006

Admitted Assets

Bonds	\$ 70,641,904
Cash, cash equivalents and short term investments	1,410,630
Investment income due and accrued	897,485
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	14,377
Deferred premiums, agents' balances and installments booked but deferred and not yet due	387,425
Reinsurance:	
Amounts recoverable from reinsurers	13,495
Other amounts receivable under reinsurance contracts	74,701
Current federal and foreign income tax recoverable and interest thereon	505,968
Net deferred tax asset	651,777
Fund administration fee receivable	69,691
State income tax recoverable	145,193
Recording keeping fee receivable	177,818
From Separate Accounts, Segregated Accounts and Protected Cell Accounts	<u>1,278,090,101</u>
Total admitted assets	<u>\$1,353,080,565</u>

Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 27,710,922
Contract claims – Life	70,431
Premiums and annuity considerations for life and accident and health contracts received in advance	7,927
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	196,981
Interest maintenance reserve	161,846
Commissions to agents due or accrued	435,832
General expenses due or accrued	41,000
Transfers to Separate Accounts due or accrued	(19,015)
Taxes, licenses and fees due or accrued, excluding federal income taxes	575
Amounts withheld or retained by company as agent or trustee	103,360
Remittances and items not allocated	(258,335)
Miscellaneous liabilities:	
Asset valuation reserve	358,110
Payable to parent, subsidiaries and affiliates	133,032
Payable for securities	41,434
From Separate Accounts statement	<u>1,274,795,240</u>
 Total liabilities	 <u>\$1,303,779,340</u>
 Common capital stock	 \$ 2,000,000
Gross paid in and contributed surplus	13,500,000
Unassigned funds (surplus)	<u>33,801,225</u>
Surplus	\$ <u>47,301,225</u>
Total capital and surplus	\$ <u>49,301,225</u>
 Total liabilities, capital and surplus	 <u>\$1,353,080,565</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Premiums and considerations	\$49,901,662	\$39,594,567	\$43,574,206	\$144,605,617
Investment income	2,968,565	3,025,359	3,181,203	3,270,875
Net gain from operations from Separate Accounts	752,154	464,414	349,485	477,528
Commissions and reserve adjustments on reinsurance ceded	1,111,797	1,245,535	798,103	1,971,118
Miscellaneous income	<u>8,064,814</u>	<u>8,829,280</u>	<u>9,116,151</u>	<u>9,939,856</u>
 Total income	 <u>\$62,798,992</u>	 <u>\$53,159,155</u>	 <u>\$57,019,148</u>	 <u>\$160,264,994</u>
 Benefit payments	 \$87,188,742	 \$83,304,575	 \$92,361,888	 \$100,960,016
Increase (decrease) in reserves	7,086,115	(2,159,007)	(1,066,964)	(11,282,790)
Commissions	2,118,878	1,747,643	1,737,087	5,298,286
General expenses and taxes	3,892,532	3,187,980	3,472,489	3,503,240
Increase in loading on deferred and uncollected premiums	(67,224)	(63,596)	(54,732)	(44,066)
Net transfers to (from) Separate Accounts	<u>(43,399,496)</u>	<u>(39,845,774)</u>	<u>(46,113,271)</u>	<u>56,267,798</u>
 Total deductions	 <u>\$56,819,547</u>	 <u>\$46,171,821</u>	 <u>\$50,336,497</u>	 <u>\$154,702,484</u>
 Net gain	 \$ 5,979,445	 \$ 6,987,334	 \$ 6,682,651	 \$ 5,562,510
Federal and foreign income taxes incurred	<u>1,405,245</u>	<u>1,246,792</u>	<u>1,127,953</u>	<u>1,322,428</u>
 Net gain from operations	 \$ 4,574,200	 \$ 5,740,542	 \$ 5,554,698	 \$ 4,240,082
Before net realized capital gains	4,574,200	5,740,542	5,554,698	4,240,082
Net realized capital gains (losses)	<u>70,944</u>	<u>(5,740)</u>	<u>(8,949)</u>	<u>(1,588)</u>
 Net income	 <u>\$ 4,645,144</u>	 <u>\$ 5,734,802</u>	 <u>\$ 5,545,749</u>	 <u>\$ 4,238,494</u>

The significant increase in premiums and considerations in 2006 was due to the roll out of the new Personal Retirement Annuity (PRA) product, a variable deferred annuity, which was launched in September, 2005.

The significant increase in net transfers to (from) separate accounts was as a result of reverses of a trend of net outflows for the prior years. The PRA product drove the increase in premiums transferred to the separate account.

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Capital and surplus, December 31, prior year	\$ <u>30,257,727</u>	\$ <u>34,891,845</u>	\$ <u>40,504,381</u>	\$ <u>46,063,221</u>
Net income	\$ 4,645,144	\$ 5,734,802	\$ 5,545,749	\$ 4,238,494
Change in net deferred income tax	(137,766)	(321,763)	(312,097)	395,875
Change in non-admitted assets and related items	219,873	263,030	389,022	(1,351,459)
Change in asset valuation reserve	<u>(93,133)</u>	<u>(63,533)</u>	<u>(63,834)</u>	<u>(44,906)</u>
Net change in capital and surplus for the year	\$ <u>4,634,118</u>	\$ <u>5,612,536</u>	\$ <u>5,558,840</u>	\$ <u>3,238,004</u>
Capital and surplus, December 31, current year	\$ <u>34,891,845</u>	\$ <u>40,504,381</u>	\$ <u>46,063,221</u>	\$ <u>49,301,225</u>

6. MARKET CONDUCT ACTIVITIES

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

A. Advertising and Sales Activities

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

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

B. Underwriting and Policy Forms

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

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 as conforming to the requirements of this chapter and not inconsistent with law . . .”

The Company used a guaranteed income annuity application form that was not approved by the Department, to issue its guaranteed income annuity contract. This application form was used prior to and during 2005, to issue a total of 369 contracts.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using an application form that was not filed with or approved by the Superintendent.

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. INTERNAL AUDIT FUNCTION

The Company does not have an internal audit function. Internal audit is an integral part of corporate governance that includes the audit committee, the board of directors, senior management and the external auditors. In particular, internal auditors and audit committees are mutually supportive. Consideration of the work of internal auditors is essential for the audit committee to gain a complete understanding of the Company's operations. Internal audit identifies strategic, operational and financial risks facing the organization, and assesses controls put in place by management to mitigate those risks.

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

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations and recommendation 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 1505(d)(3) of the New York Insurance Law by receiving services from its ultimate parent without giving prior notification to the Superintendent.</p> <p>On March 31, 2004 the Company submitted for approval an Administrative Services Agreement to the Department. The Department approved the agreement which became effective on August 1, 2004. However, a similar violation appears in the current report on examination.</p>
B	<p>The examiner recommended that the Company file a service agreement with the Superintendent to cover the services provided by FMR.</p> <p>The Company filed a service agreement with the Superintendent to cover the services provided by FMR.</p>
C	<p>The Company violated Section 1210 of the New York Insurance Law by failing to file the amendments to its by-laws for approval by the Superintendent.</p> <p>The Company subsequently filed the amendments to its by-laws with the Superintendent.</p>
D	<p>The Company violated Section 4211(a) of the New York Insurance Law by failing to notify the Superintendent, ten days before the election of directors.</p> <p>The Company subsequently notified the Department of the election of its directors.</p>
E	<p>The Company violated Section 4211(b) of the New York Insurance Law by failing to notify the Superintendent of the election of successor directors.</p> <p>The Company subsequently notified the Department of the election of successor directors.</p>
F	<p>The Company violated Section 1308(f)(1)(A) of the New York Insurance Law when it reinsured 100% of its whole risk with GE Capital Life Assurance Company of New York without the permission of the Superintendent.</p> <p>On June 27, 2003 the Company filed the reinsurance agreement with the Department for approval.</p>

<u>Item</u>	<u>Description</u>
G	<p>The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain the manner and extent of distribution of its advertisements.</p> <p>The Company has updated its advertising files to include the appropriate notations as to the manner and extent of distribution of its advertisements.</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 withdraw Administrative Services Agreement, file number 21675, between the Company and FISCO because the services are no longer being provided.	8
B	The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to notify the Superintendent in writing of its intention to enter into agreements with affiliates for the rendering of services on a regular or systematic basis at least thirty days prior to rendering such services.	9
C	The examiner recommends that the Company file the service agreements with the Superintendent to cover the services provided to FIIOC and FDC.	9
D	The Company violated Section 3201(b)(1) of the New York Insurance Law by using an application form that was not filed with or approved by the Superintendent.	18
E	The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control. To the extent that audits performed by an affiliate on a functional basis are intended to encompass the activities of the Company, it should be clear from the audit workpapers that Company transactions or activities are specifically included in the samples reviewed by internal audit.	19

Respectfully submitted,

Bibi S. Ishak
Senior Insurance Examiner

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

Bibi S. Ishak, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

Bibi S. Ishak

Subscribed and sworn to before me

this _____ day of _____ 2010.

APPOINTMENT NO. 22665

STATE OF NEW YORK
INSURANCE DEPARTMENT

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

BIBI ISHAK

as a proper person to examine into the affairs of the

EMPIRE FIDELITY INVESTMENTS LIFE INSURANCE COMPANY

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

COMPANY

with such other information as she 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 16th day of July, 2007

ERIC R. DINALLO
Superintendent of Insurance


Superintendent

