



STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF THE
ML LIFE INSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2004

DATE OF REPORT:

MARCH 24, 2006

STATE OF NEW YORK INSURANCE DEPARTMENT

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EXAMINER:

PHARES CATON

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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 24, 2006

Honorable Howard Mills
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22389, dated July 8th 2005, and annexed hereto, an examination has been made into the condition and affairs of ML Life Insurance Company of New York, hereinafter referred to as “the Company,” at its home office located at 222 Broadway, New York, New York 10038.

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 violated Section 1505(d)(3) of the New York Insurance Law when it did not notify the superintendent in writing of its intention to enter into five service agreements with affiliates prior to doing so, and when it failed to comply with its approved service agreements. (See item 3 of this report)

The Company violated Section 51.6(b)(2) of Department Regulation No. 60 when it did not obtain and maintain proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" and or the "Disclosure Statement" in several instances. (See item 6A of this report)

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 when it did not furnish to the insurers whose coverages were being replaced a copy of the proposal and sales material used in the sale of its products. (See item 6A of this report)

The Company violated Section 51.6(b)(5) of Department Regulation No. 60 when it did not submit quarterly reports to the Superintendent of Insurance, within 30 days of the end of each quarter indicating which insurers, if any, have failed to provide the information required by the regulation. (See item 6A of this report)

The Company violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not received with the application, or if the forms did not meet the requirements of the Regulation, the Company failed to, within ten days from the date of receipt of the application, either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore. (See item 6A of this report)

The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. (See item 6A of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2001. This examination covers the period from January 1, 2002 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).

The examination comprised a verification of assets and liabilities as of December 31, 2004 to determine whether the Company's 2004 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

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

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 November 28, 1973 under the name of Agway Life Insurance Company. The Company was licensed and commenced business on March 27, 1974.

The Company's stock was purchased by the Equitable Life Assurance Society of the United States ("Equitable") on May 21, 1986 for \$9,500,000. Equitable renamed the Company Royal Tandem Life Insurance Company on August 26, 1986.

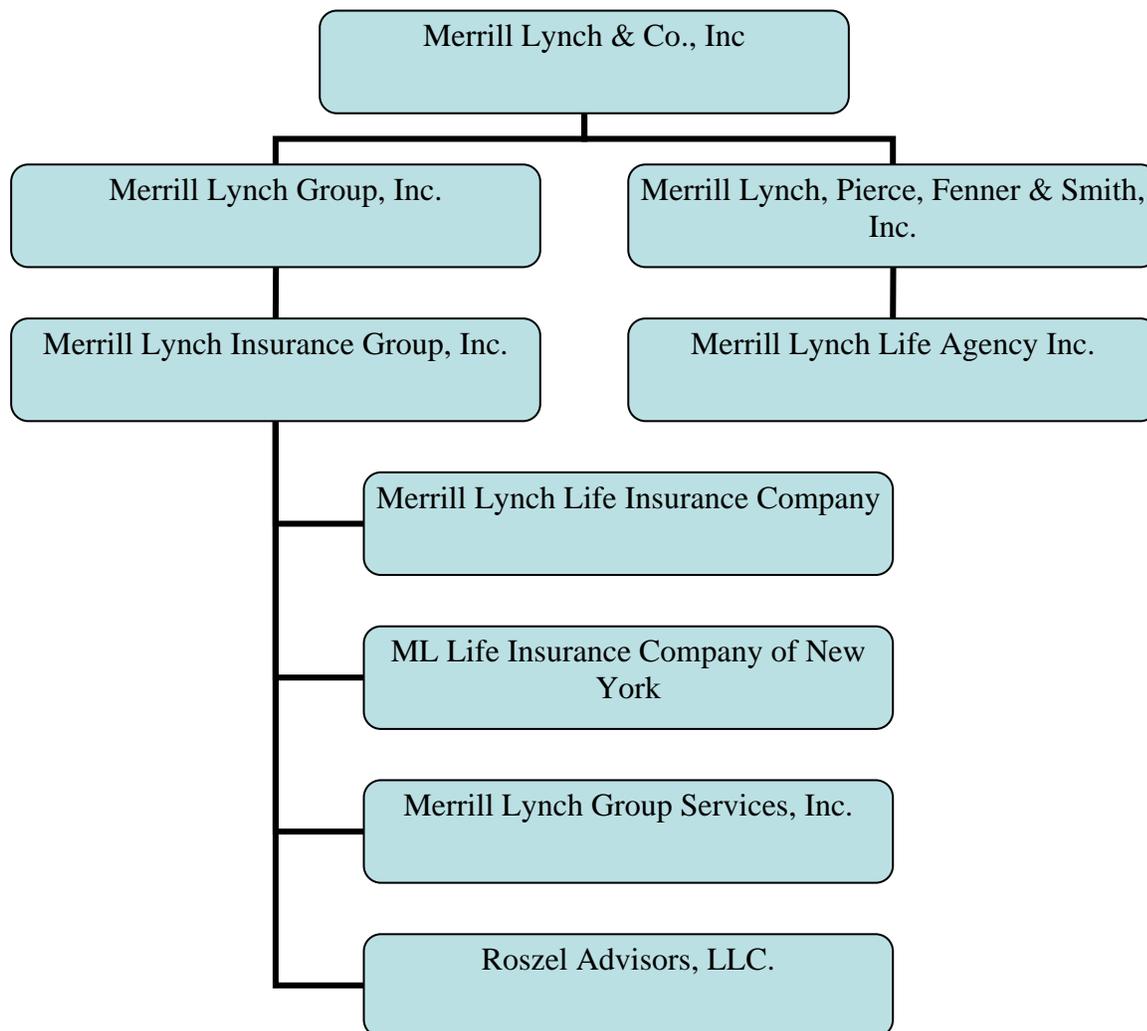
On July 31, 1987, Equitable sold 25% of its interest in the Company to Merrill Lynch & Co., Inc. ("Merrill Lynch"). Immediately following the sale, Equitable and Merrill Lynch contributed their respective interest in the Company to the initial capitalization of Tandem Financial Group, Inc., ("Tandem Group") a Delaware insurance holding company. Royal Tandem Life Insurance Company ("Royal Tandem") and its affiliate, Tandem Insurance Group, Inc. ("Tandem Insurance"), were direct wholly owned subsidiaries of Tandem Group.

On October 11, 1989, Merrill Lynch exercised its option under a shareholder's agreement with Equitable to purchase all of Equitable's interest in Tandem Group. As a result, Tandem Group became a wholly owned subsidiary of Merrill Lynch. On September 6, 1990, Tandem Group was renamed Merrill Lynch Insurance Group, Inc. ("MLIG"). On September 11, 1991, the Company's name was changed to ML Life Insurance Company of New York. The Company's affiliate, Tandem Insurance, was merged into Merrill Lynch Life Insurance Company ("MLLIC"), an Arkansas insurance company, on October 1, 1991.

B. Holding Company

The Company and its affiliate, MLLIC, are wholly owned subsidiaries of MLIG, a Delaware insurance holding company, which in turn is a wholly owned subsidiary of Merrill Lynch Group, Inc., (“MLG”) a Delaware financial services holding company. The ultimate parent of the Company is Merrill Lynch, a Delaware financial services holding company. Also affiliated are Merrill Lynch Life Agency Inc. (“MLLA”) and Merrill Lynch, Pierce, Fenner & Smith Inc. (“MLPF&S”). MLLA is the Company’s general agent and MLPF&S is the registered broker dealer used in the sale of the Company’s products.

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 22 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 Services(s) Covered	Income/(Expense)* For Each Year of the Examination	
General Agency Agreement 21538	8/3/1987	MLLA	The Company	General agency services	2002 2003 2004	\$(1,901,526) \$(2,267,211) \$(3,304,416)
Service Agreement 14685	6/22/1987	MLIG	The Company	Accounting, data processing, legal, actuarial, management and advertising services	2002 2003 2004	\$(3,400,880) \$(3,347,513) \$(3,460,729)
Management Agreement 18052	10/1/1990 and amended 3/1/1993	Merrill Lynch Investment Managers L.P. ("MLIM")	The Company	Invested asset management services	2002 2003 2004	\$ (150,393) \$ (170,961) \$ (168,552)
Variable Life Insurance Services Agreement and Amended & Restated Administrative Services Agreement 25646	5/22/1998 and amended 7/17/1998	MLLIC	The Company	Underwriting and all policyholder services for the variable life and annuity business.		Expense amount included with service agreement number 14685
Underwriting Agreement 19072A	1/11/1993	MLPF&S	The Company	MLPF&S distributes the Company's modified guaranteed annuity contracts.		
Agreement 19072A	1/11/1993	The Company	Merrill Lynch Variable Series Fund, Inc. ("MLVSF")	Maintains net asset value of Reserve Asset Fund Share at \$1.		

Type of Agreement and Department File number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Services(s) Covered	Income/(Expense)* For Each Year of the Examination	
Agreement 19072A	1/11/1993	The Company	MLVSF	Maintains the net asset value of the Domestic Money Market Portfolio at \$1.		
Payroll Consolidation and Cost Allocation Agreement 17152	1/1/1993	Merrill Lynch	The Company	Payroll services		Expense amount included with service agreement number 14685
Administrative Services Agreement 19072A	1/11/1993	MLVSF	The Company - Variable Annuity Separate Account A & B.	Administrative services related to the Company's variable annuity separate accounts.		Expense amount included with service agreement number 14685
Underwriting Agreement 27651	8/30/2002	MLPF&S	The Company - Variable Annuity Separate Account C.	The Company appointed MLPF&S as its principal underwriter and distributor of the Company's variable annuity contracts issued through Separate Account C.		
Underwriting Agreement	5/15/2003	MLPF&S	The Company - Variable Annuity Separate Account D.	Principal underwriter and exclusive distributor of the Company's variable annuity contracts issued through Separate Account D.		
Underwriting and Distribution Agreement 19072A	1/11/1993	MLPF&S	The Company - Variable Annuity Separate Account	Principal underwriter and exclusive distributor of the Company's variable annuity contracts issued through Separate Accounts A & B.		

Type of Agreement and Department File number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Services(s) Covered	Income/(Expense)* For Each Year of the Examination	
Agreement 19072A	1/11/1991	MLPF&S	The Company – (Formerly Royal Tandem)	Making certain unit investment trusts available to the Company’s Separate Account.		
Agreement 19072A	1/1/1991	Merrill Lynch Funds Distributor, Inc. (“MLFD”)	The Company (Formerly Royal Tandem)	Making certain Series Funds available to the Company’s Separate Account.		
Administrative Agreement 19072A	1/11/1993	MLFD	The Company – Variable Life Separate Account II	Administrative functions regarding the sale of shares to fund the Company’s Variable Life Separate Account II contracts.		
Agreement 19072A	1/11/1993	MLPF&S	The Company – Variable Life Separate Account II	Making certain unit investment trusts available to the Variable Life Separate Account II of the Company.		
Distribution Agreement 19072A	1/11/1993	MLPF&S	The Company - Variable Life Separate Account II	Principal underwriter and exclusive distributor for the Variable Life Separate Account II contracts.		
Participation Agreement 19072A	4/2/1993	MLSF & MLLIC	The Company Variable Life Separate Account	Each party agrees to monitor participation in a single series fund offered through the separate accounts of each.		
Participation Agreement	10/11/2002	FAM Distributors, Inc. (“FAM”) (formerly known as MLFD)	The Company	FAM agrees to make certain funds available to the Company to purchase on behalf of the Company’s Separate Account D.		

Type of Agreement and Department File number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Services(s) Covered	Income/(Expense)* For Each Year of the Examination	
Agreement	10/11/2002	The Company	FAM	The Company is to provide certain administrative services for the separate accounts portfolio Funds.		
Shareholder Services Agreement	10/11/2002	The Company	FAM	The Company is to provide certain shareholder services to contract owners for the distributor.		
Transfer Agency Agreement	10/11/2002	The Company	Certain registered investment companies ("the Funds")	The Company agrees to provide certain transfer agency services for the Funds.		

*Amount of income or (expense) incurred by the Company.

The Company also has a tax allocation agreement in effect whereby the Company files a consolidated tax return with Merrill Lynch.

Section 1505(d)(3) 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 . . .

rendering of services on a regular or systematic basis . . .”

The Company introduced a new separate account, Separate Account D in 2003. In order to sell products through such account, the Company entered into an agreement with MLPF&S, whereby the Company appointed MLPF&S as the principal underwriter of all annuities issued

through Separate Account D. The Company also entered into one participation agreement and three service agreements in 2002 with FAM, whereby the Company and FAM agreed to provide certain services for each other in relation to the Company's separate accounts portfolio Funds.

The Company violated Section 1505(d)(3) of the New York Insurance Law when it did not notify the Superintendent in writing of its intention to enter into these agreements prior to doing so.

The examiner also noted that the Company did not include the agreements with FAM in item 10 of the Notes to Financial Statements (Information Concerning Parent Subsidiaries and Affiliates) in its filed 2002, 2003 and 2004 annual statements.

The examiner recommends that the Company exercise greater care in the preparation of its filed annual statements and report all agreements in effect in its annual statements going forward.

The above service agreement table includes agreements whereby the Company provided administrative services to affiliates, however, no income or expenses were reported for these agreements (i.e., MLLIC, Merrill Lynch and MLVSF) during the examination period. The Company explained that for these three agreements, the Company actually made expense payments to MLIG for allocation to the other affiliates. This method of payment was not agreed to in the Company's approved service agreements with MLLIC, Merrill Lynch and MLVSF.

The Company again violated Section 1505(d)(3) of the New York Insurance Law when it failed to comply with its approved service agreements.

Due to the manner in which the Company has accounted for its service agreements, it is difficult to determine whether there are duplicative agreements or agreements that are no longer in use. It is also difficult to ascertain whether the approved service agreements reflect the actual services provided and received. The examiner recommends that the Company review its service agreements and formally amend any agreements where the terms of the agreements conflict with how they are being implemented. The Company should also file any such amended service agreements with the Department. The examiner also recommends that the Company either withdraw service agreements with affiliates whereby no income or expense was reported for services, or provide an acceptable explanation as to why there is no income or expense reported for such service agreements.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 13 and not more than 36 directors. 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, 2004, the board of directors consisted of 14 members. Meetings of the board are held quarterly.

The 14 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>
Deborah J. Adler New Hope, PA	Senior Vice President and Chief Actuary ML Life Insurance Company of New York and Merrill Lynch Insurance Group, Inc.	2003
Frederick J. C. Butler* New York, NY	Managing Director Bentley Associates, L.P.	1991
Richard M. Drew* Jackson Heights, NY	Retired	1993
Hartwell M. Gardner Princeton, NJ	Chairman of the Board ML Life Insurance Company of New York Senior Vice President Merrill Lynch & Co., Inc.	2001
Christopher J. Grady Pennington, NJ	Senior Vice President ML Life Insurance Company of New York and Merrill Lynch Insurance Group, Inc.	2000
Robert L. Israeloff* Manhasset, NY	Consultant Israeloff, Trattner & Co., P.C.	1991
Joseph E. Justice Sewell, NJ	Senior Vice President, Chief Financial Officer, and Treasurer ML Life Insurance Company of New York and Merrill Lynch Insurance Group, Inc.	2001
Nikos K. Kardassis Princeton, NJ	President and Chief Executive Officer ML Life Insurance Company of New York and Merrill Lynch Insurance Group, Inc.	2001

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Robert A. King* Williamsburg, VA	Retired	1991
Irving M. Pollack* Rockville, MD	Attorney Dilworth & Paxson, LLC	1991
Concetta M. Ruggiero Skillman, NJ	Senior Vice President ML Life Insurance Company of New York Merrill Lynch Insurance Group, Inc.	2003
Lori M. Salvo Milltown, NJ	Vice President, Senior Counsel and Director of Compliance and Secretary ML Life Insurance Company of New York and Merrill Lynch Insurance Group, Inc.	2001
Cynthia L. Sherman* Naples, FL	Retired	1993
Barry G. Skolnick Belle Mead, NJ	Senior Vice President and General Counsel ML Life Insurance Company of New York Merrill Lynch Insurance Group, Inc.	1989

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

In January 2006, Nikos Kardassis, Christopher Grady and Hartwell M. Gardner resigned from the board. Deborah J. Adler, replaced Hartwell M. Gardner as Chairman of the Board. John Carroll and Paul Michalowiski replaced Christopher Grady and Nikos Kardassis as directors.

Section 1202(b)(2) of the New York Insurance Law states, in part:

“The board of directors of a domestic life insurance company shall establish one or more committees comprised solely of directors who are not officers or employees of the company or of any entity controlling, controlled by, or under common control with the company and who are not beneficial owners of a controlling interest in the voting stock of the company or any such entity. Such committee or committees shall have responsibility for . . . evaluating the performance of officers deemed by such committee or committees to be principal

officers of the company and recommending to the board of directors the selection and compensation of such principal officers . . . ”

The examiner reviewed the minutes of the Audit and Compensation committees and noted that there was no mention of performance evaluations or recommendations of compensation for the Company’s principal officers.

The Company violated Section 1202(b)(2) of the New York Insurance Law when its independent committees failed to evaluate the performance and recommend the compensation of the Company’s principal officers.

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>
Nikos K. Kardassis	President and CEO
Deborah J. Adler	Senior Vice President and Chief Actuary
Amy L. Ferrero	Senior Vice President
Joseph E. Justice	Senior Vice President, Chief Financial Officer and Treasurer
Barry G. Skolnick	Senior Vice President and General Counsel
Christopher J. Grady	Senior Vice President
Concetta M. Ruggiero	Senior Vice President
Lori M. Salvo	Vice President, Senior Counsel, Director of Compliance and Secretary
Connie F. Yost	Vice President and Controller
Brian H. Buckley*	Vice President and Senior Counsel

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

In January 2006, Deborah J. Adler replaced Nikos Kardassis as President and CEO.

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 nine states, namely Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. However, it currently limits its marketing to the state of New York. In 2004 annuity considerations represented 99.31% of the total considerations and premiums collected. The Company did not write any life business during the examination period.

The Company's product portfolio consists primarily of individual variable annuity products. All of these products offer some form of guaranteed minimum death benefit ("GMDB"). Each variable annuity product provides tax-deferred retirement savings with the opportunity for diversified investing in the underlying fund portfolio. The variable products are differentiated by degree of liquidity afforded to the contract owner. The B-Share variable annuity offers a guaranteed minimum income benefit ("GMIB") provision and contains a seven year surrender charge; the L-Share variable annuity does not offer a GMIB provision and contains a three year surrender charge; and the C-Share variable annuity does not offer a GMIB provision and has no surrender charge.

The Company also issues a modified guaranteed annuity product. This product provides tax deferred retirement savings through a guaranteed interest rate for a period selected by the contract owner, but imposes a market value adjustment for withdrawals prior to the expiration of the guaranteed period.

The Company introduced a new annuity product line in 2005 which is intended to replace its existing variable annuity products. The new variable annuity product line provides the ability to customize variable annuity products with specific contract features, charge structures and investment options tailored to meet clients' specific financial objectives.

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

E. Reinsurance

As of December 31, 2004, the Company had reinsurance treaties in effect with 19 companies, of which 8 were authorized or accredited. The Company's existing block of life insurance business is reinsured on a coinsurance, and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts was \$500,000. The total face amount of life insurance ceded as of December 31, 2004, was \$91,716,655, which represents 13% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$11,243, was supported by letters of credit, and funds withheld. The total face amount of life insurance assumed as of December 31, 2004, was \$2,078,663. The Company reported reserves and modified coinsurance reserves for this business in the amounts of \$364,583 and \$1,042,616, respectively.

The Company entered into two reinsurance agreements, effective June 16, 2003, with ACE Tempest Life Reinsurance LTD for contracts sold on or after June 16, 2003, whereby the Company cedes 100% quota share of the guaranteed minimum death benefit of its Merrill Lynch Retirement Plus variable annuity product, and the guaranteed minimum income benefit of its Merrill Lynch Retirement Plus and IRA annuity products.

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 (decline) during the period under review:

	December 31, <u>2001</u>	December 31, <u>2004</u>	Increase (Decrease)
Admitted assets	\$ <u>1,266,289,219</u>	\$ <u>1,251,443,889</u>	\$(<u>14,845,330</u>)
Liabilities	\$ <u>1,232,024,208</u>	\$ <u>1,218,763,519</u>	\$(<u>13,260,689</u>)
Common capital stock	\$ 2,200,000	\$ 2,200,000	\$ 0
Gross paid in and contributed surplus	82,102,296	82,102,296	0
Unassigned funds (surplus)	<u>(50,037,286)</u>	<u>(51,621,926)</u>	<u>(1,584,640)</u>
Total capital and surplus	\$ <u>34,265,011</u>	\$ <u>32,680,370</u>	\$ (<u>1,584,641</u>)
Total liabilities, capital and surplus	\$ <u>1,266,289,219</u>	\$ <u>1,251,443,889</u>	\$(<u>14,845,330</u>)

The decrease in admitted assets from 2001 to 2004 is primarily due to a decrease in fixed rate annuity contracts in force.

The Company's invested assets as of December 31, 2004, exclusive of Separate Accounts, were mainly comprised of bonds (53.4%), contract loans (44.9%) and cash and short term investments (1.7%), respectively. It should be noted that contract loans are a significant percentage of general account assets because all loans taken on the variable life business are passed through from the separate account to the general account.

The Company's bond portfolio, as of December 31, 2004, was entirely comprised of investment grade obligations.

The majority (86%) of the Company's admitted assets, as of December 31, 2004, is derived from Separate Accounts.

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>2002</u>	<u>2003</u>	<u>2004</u>
Outstanding, end of previous year	10,784	10,578	10,351
Issued during the year	663	532	676
Other net changes during the year	<u>(869)</u>	<u>(759)</u>	<u>(1,045)</u>
Outstanding, end of current year	<u>10,578</u>	<u>10,351</u>	<u>9,982</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>2002</u>	<u>2003</u>	<u>2004</u>
Ordinary:			
Life insurance	\$ <u>(3,014,323)</u>	\$ <u>5,244,969</u>	\$ <u>3,596,963</u>
Individual annuities	<u>(10,219,508)</u>	<u>1,321,597</u>	<u>3,544,512</u>
Total	\$ <u>(13,233,831)</u>	\$ <u>6,566,566</u>	\$ <u>7,141,475</u>

The losses in 2002 were due to an increase in GMDB reserves for the variable life and annuity businesses. The increase in gains for both the life insurance and individual annuity lines of business from 2002 to 2003 was attributable to decreases in variable life and annuity GMDB reserves.

5. FINANCIAL STATEMENTS

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

Admitted Assets

Bonds	\$ 91,370,280
Contract loans	76,750,134
Cash and short term investments	2,986,010
Reinsurance ceded	
Amounts recoverable from reinsurers	172,775
Deferred premiums, agents' balances and installments booked but deferred and not yet paid	6,793
Net deferred tax asset	464,782
Investment income due and accrued	2,847,963
Administrative service agreement fees receivable	154,958
Contract fees receivable	70,886
From Separate Accounts statement	<u>1,076,619,308</u>
Total admitted assets	<u>\$1,251,443,889</u>

Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 138,079,911
Liability for deposit-type contracts	8,110,028
Policy and contract claims	
Life	5,039,622
Policy and contract liabilities	
Other amounts payable on reinsurance	26,299
Interest maintenance reserve	481,126
General expenses due or accrued	36,449
Transfers to Separate Accounts due or accrued	(15,080,021)
Taxes, licenses and fees due or accrued	771,772
Federal and foreign income taxes	733,836
Remittances and items not allocated	737,313
Miscellaneous liabilities:	
Asset valuation reserve	794,271
Reinsurance in unauthorized companies	32,809
Funds held under reinsurance treaties with unauthorized reinsurers	23,386
Payable to parent, subsidiaries and affiliates	2,357,410
From Separate Accounts statement	<u>1,076,619,308</u>
 Total liabilities	 <u>\$1,218,763,519</u>
 Common capital stock	 \$ 2,200,000
Gross paid in and contributed surplus	82,102,296
Unassigned funds (surplus)	<u>(51,621,926)</u>
 Total capital and surplus	 <u>\$ 32,680,370</u>
 Total liabilities, capital and surplus	 <u>\$1,251,443,889</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Premiums and considerations	\$ 62,744,989	\$ 57,732,726	\$ 74,589,556
Investment income	9,250,576	8,284,118	7,607,397
Miscellaneous income	<u>17,838,087</u>	<u>16,423,548</u>	<u>18,406,234</u>
Total income	<u>\$ 89,833,652</u>	<u>\$ 82,440,392</u>	<u>\$100,603,187</u>
Benefit payments	\$113,801,919	\$105,376,354	\$133,667,807
Increase in reserves	10,249,407	(11,556,055)	(7,192,591)
General expenses and taxes	5,410,281	5,874,682	7,923,477
Increase in loading on deferred and Uncollected premium	(302)	144	(131)
Net transfers to (from) Separate Accounts	(23,844,401)	(28,135,921)	(43,500,303)
Miscellaneous deductions	<u>(27,661)</u>	<u>(27,696)</u>	<u>(28,419)</u>
Total deductions	<u>\$105,589,243</u>	<u>\$ 71,531,508</u>	<u>\$ 90,869,840</u>
Net gain (loss)	\$ (15,755,591)	\$ 10,908,884	\$ 9,733,347
Federal and foreign income taxes incurred	<u>(2,521,760)</u>	<u>4,342,318</u>	<u>2,591,872</u>
Net gain (loss) from operations			
Before net realized capital gains	\$ (13,233,831)	\$ 6,566,566	\$ 7,141,475
Net realized capital gains (losses)	<u>(589,820)</u>	<u>17</u>	<u>(193)</u>
Net income	<u>\$ (13,823,651)</u>	<u>\$ 6,566,583</u>	<u>\$ 7,141,282</u>

The Company reported a net loss from operations of \$13,823,651 in 2002, compared to net gains of \$6,566,583 and \$7,141,282 in 2003 and 2004 respectively. The loss in 2002 is attributed to a \$21.0 million increase in GMDB reserves. The increase in the reserves as prescribed by statutory accounting principles and annual cash-flow testing is primarily due to negative investment performance in the underlying mutual funds supporting the variable products.

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Capital and surplus, December 31, prior year	\$ <u>34,265,011</u>	\$ <u>21,411,376</u>	\$ <u>28,370,654</u>
Net income	\$(13,823,651)	\$ 6,566,583	\$ 7,141,282
Change in net unrealized capital gains (losses)	30,783	0	0
Change in net deferred income tax	0	(67,883)	10,993,011
Change in non admitted assets & related items	0	0	(11,036,867)
Change in liability for reinsurance in unauthorized companies	0	(1,190)	(31,619)
Change in asset valuation reserve	383,313	438,667	(6,347)
Other changes in surplus in Separate Accounts statement	(20,600)	23,100	0
Cumulative effect of changes in accounting Principles	576,521	0	0
Parent company prior years' allocated expenses	0	0	(249,743)
Dividends to stockholders	<u>0</u>	<u>0</u>	<u>(2,500,000)</u>
Net change in capital and surplus	\$(<u>12,853,634</u>)	\$ <u>6,959,278</u>	\$ <u>4,309,716</u>
Capital and surplus, December 31, current year	\$ <u>21,411,376</u>	\$ <u>28,370,654</u>	\$ <u>32,680,370</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:

“(c) Where a replacement has occurred or is likely to occur . . .
 (2) Submit to the insurer whose policy or contract is being replaced . . . 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.”

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

Duties of insurers

“(a) Each insurer shall . . .
 (3) Maintain signed and completed copies of the “Definition of Replacement” . . .”

Section 51.6(b) of Department Regulation No. 60 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;" . . .

(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;"

(5) Submit quarterly reports within thirty days of the end of each quarter, beginning at the end of the first full calendar quarter after the effective date of this

Part, to the Superintendent of Insurance, indicating which insurers, if any, have failed to provide the information as required in Section 51.6(c)(2) herein;

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of...the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced . . .

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

The examiner reviewed a sample of 121 annuity replacements, representing 28% of the 439 replacements during the examination period and noted the following:

1. In 10 of the replacements reviewed, the Company did not obtain the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" and/or the completed "Disclosure Statement".

The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to obtain 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".

2. In 100 of the 121 (83%) replacements reviewed, the Company indicated that sales materials were used in the sale of the annuities. However, the examiner did not note any instance where the Company maintained proof that the proposals and sales materials were presented to the Company being replaced as required by the Regulation.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 when it did not furnish to the insurers whose coverages were being replaced a copy of the proposal and sales materials used in the sale of its products.

3. The Company did not submit the quarterly reports to the Department as required by the regulation. The Company provided the reports to the examiner upon request and stated that it was under the impression that the Department intended to issue directions regarding the form and manner of filing reports shortly after implementation of

Regulation No. 60. The Company wanted direction as to whether the filings should be directed to a particular person or area within the Department.

The Company violated Section 51.6(b)(5) of Department Regulation No. 60 when it did not submit quarterly reports to the Superintendent of Insurance, within 30 days of the end of each quarter indicating which insurers, if any, have failed to provide the information required by the regulation.

4. The examiner also noted the following:

- The Company did not obtain, nor maintain, signed copies of the Definition of Replacement for 3 contracts as required by Department Regulation No. 60.
- In 6 instances, there was no evidence to indicate that the Company obtained or submitted the proper authorization from the applicant, to the replaced company.

In addition, the Company violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not received with the application, or if the forms did not meet the requirements of the Regulation, the Company failed to, within ten days from the date of receipt of the application, either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore.

The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with 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.

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

C. Treatment of Policyholders

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

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

7. 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 when it did not notify the Superintendent in writing of its intention to enter into five agreements with affiliates prior to doing so.	9 – 10
B	The examiner recommends that the Company exercise greater care in the preparation of its filed annual statements and report all agreements in effect in its annual statements going forward.	10
C	The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to comply with its approved service agreements.	10
D	The examiner recommends that the Company review its service agreements and formally amend any agreements where the terms of the agreements conflict with how they are being implemented. The Company should also file any such amended service agreements with the Department.	10
E	The examiner recommends that the Company either withdraw service agreements with affiliates whereby no income or expense was reported for services, or provide an acceptable explanation as to why there is no income or expense reported for such service agreements.	10
F	The Company violated Section 1202(b)(2) of the New York Insurance Law when its independent committees failed to evaluate the performance and recommend the compensation of the Company's principal officers.	12 – 13
G	The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to obtain proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" and or the "Disclosure Statement".	23
H	The Company violated Section 51.6(b)(4) of Department Regulation No. 60 when it did not furnish to the insurers whose coverages were being replaced a copy of the proposal and sales materials used in the sale of its products.	23

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 51.6(b)(5) of Department Regulation No. 60 when it did not submit quarterly reports to the Superintendent of Insurance, within 30 days of the end of each quarter indicating which insurers, if any, have failed to provide the information required by the regulation.	23 – 24
J	The Company violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not received with the application, or if the forms did not meet the requirements of the Regulation, the Company failed to, within ten days from the date of receipt of the application, either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore.	24
K	The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60.	24

APPOINTMENT NO. 22389

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:

PHARES CATON

as a proper person to examine into the affairs of the

ML LIFE INSURANCE COMPANY OF NEW YORK

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

COMPANY

with such other information as he shall deem requisite.

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

this 8th day of July, 2005



HOWARD MILLS
Superintendent of Insurance

Howard Mills
Superintendent