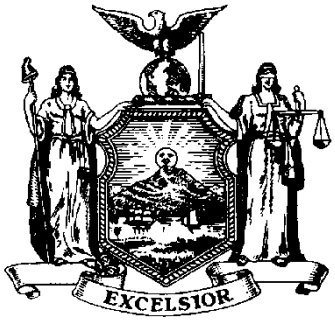

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

BALBOA LIFE INSURANCE COMPANY OF NEW YORK

CONDITION: DECEMBER 31, 2011

DATE OF REPORT: MAY 11, 2012

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EXAMINER: MANISH GAJIWALA

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Andrew M. Cuomo
Governor

Shirin Emami
Acting Superintendent

January 12, 2016

Honorable Shirin Emamai
Acting Superintendent of Financial Services
Albany, New York 12257

Madam:

In accordance with instructions contained in Appointment No. 30803, dated January 17, 2012 and annexed hereto, an examination has been made into the condition and affairs of Balboa Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 520 White Plains Road, Suite 5089, Tarrytown, NY 10591.

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 and recommendation contained in this report appear below.

- The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing contributory group accidental death and dismemberment policies using applications which differed from the approved version. (See Section 6B of this report)

- The Company violated Section 403(d) of the New York Insurance Law by using an application that did not contain the fraud warning notice. A similar violation appeared in the prior report on examination. (See Section 6B of this report)

- The Company violated section 2611(a) of New York Insurance Law by failing to obtain the written informed consent of term life insurance applicants prior to performing HIV testing and without providing general information about AIDS and the transmission of HIV infection. (See Section 6C of this report)

- The examiner recommends that the Company immediately resume sending an explanation of benefit letter to the beneficiary or the deceased's estate indicating the distribution of the death benefit between any creditors and the beneficiaries or the deceased's estate. This recommendation appeared in the prior report on examination. (See Section 6C of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2006. This examination covers the period from January 1, 2007 through December 31, 2011. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2011 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, 2011 to determine whether the Company's 2011 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

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 7 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

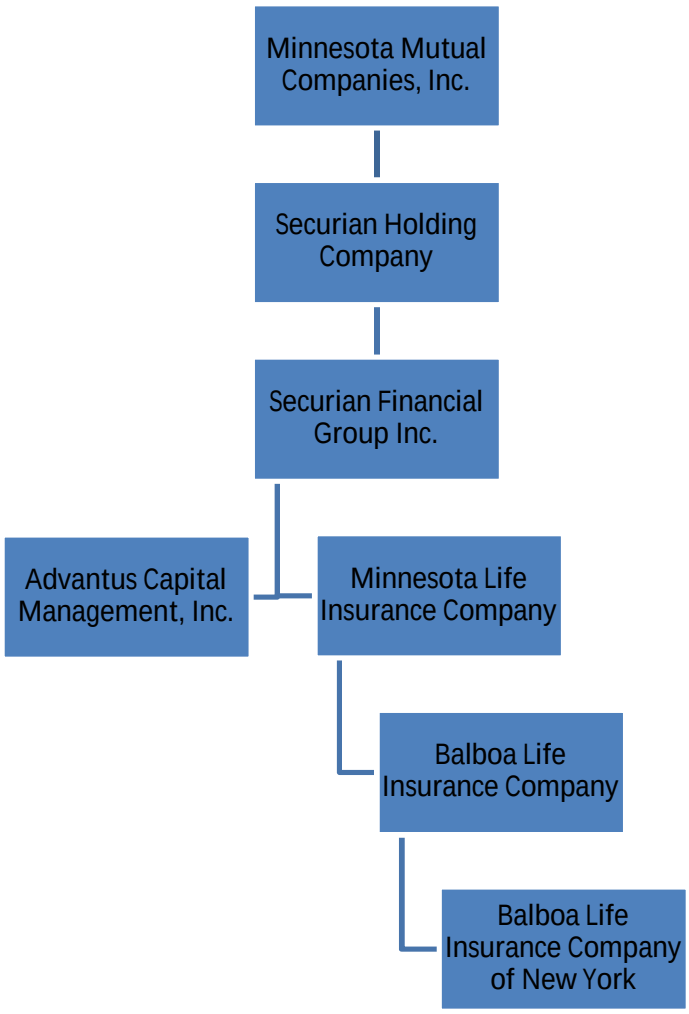
The Company was incorporated as a stock life insurance company under the laws of New York on September 18, 2000, was licensed on December 22, 2000 and commenced business on January 1, 2001. Initial resources of $10,960,000 consisting of common capital stock of $2,000,000 and paid in and contributed surplus of $8,960,000 were provided through the sale of 2,000 shares of common stock (with a par value of $1,000 each) for $5,480 per share. In 2000, the Company received an additional surplus contribution of $1,045,554 from its parent, Balboa Life Insurance Company ("BLIC"). In January 2008, the Company received another surplus contribution of $1,700,000 from BLIC, bringing its total capital and paid in and contributed surplus to $13,705,554 as of December 31, 2011.

On July 1, 2008, the Company's former ultimate parent, Countrywide Financial Corporation, was acquired by Bank of America Corporation ("BAC"). On October 1, 2011, the Company and BLIC were acquired by Minnesota Life Insurance Company ("MLIC"). Minnesota Mutual Companies, Inc. ("MMC") is currently the ultimate parent of the Company.

B. Holding Company

The Company is a wholly owned subsidiary of BLIC, a California life insurance company. BLIC is in turn a wholly owned subsidiary of MLIC, a Minnesota domiciled life insurance company. The ultimate parent of the Company is MMC, a Minnesota mutual holding company.

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



The Company had four 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	(Expense)* For Each Year of the Examination
Administrative Service Agreement Department File No. 33351a	01/01/2006	Balboa Life & Casualty, LLC **	The Company	Payroll, facilities, equipment, disbursements, IT, accounting, compliance, actuarial, underwriting, policyholder services, claims, reinsurance and agency and sales services.	2007- $(450,000) 2008- $(264,000) 2009- $0 2010- $0 2011- $0
Administrative Service Agreement Department File No. 41209	01/01/2009	Balboa Life & Casualty, LLC **	The Company	Payroll, facilities, equipment, disbursements, IT, accounting, compliance, actuarial, underwriting, policyholder services, claims, reinsurance and agency and sales services.	2007 - $0 2008 - $0 2009 - $(172,000) 2010 - $(655,000) 2011 - $(137,198)
Administrative Service Agreement Department File No. 44730	10/01/2011	MLIC	The Company	Accounting, tax, claims and functional support, etc.	2007 - $0 2008 - $0 2009 - $0 2010 - $0 2011 - $(61,929)
Investment Advisory Agreement Department File No. 44730	10/01/2011	Advantus Capital Management, Inc.	The Company	Investment advisory services.	2007 - $0 2008 - $0 2009 - $0 2010 - $0 2011 - $(9,847)

* Amount of Income or (Expense) Incurred by the Company
** No longer an affiliate of the Company

The Company participates in a federal income tax allocation agreement with its parent and affiliates.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 21 directors. However, if the admitted assets of the Company should exceed $1.5 billion during any calendar year, the number of directors would be increased to not less than 13 within one year following the end of such calendar year. 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, 2011, the board of directors consisted of 11 members. Meetings of the board are held at least once each calendar year.

The 11 board members and their principal business affiliation, as of December 31, 2011, were as follows:

Name and Residence	Principal Business Affiliation	Year First Elected
Frank Berrish* Entwell, NY	President and Chief Executive Officer Visions Federal Credit Union	2011
John Bruder* Mendota Heights, MN	Retired Senior Vice President Securian Financial Group, Inc.	2011
Leslie Chapman Bloomington, MN	Senior Vice President Minnesota Life Insurance Company	2011
Gary Christensen Cottage Grove, MN	Vice President Minnesota Life Insurance Company	2011
Christopher Hilger Saint Paul, MN	President and Chief Executive Officer Balboa Life Insurance Company of New York	2011
David LePlavy Afton, MN	Treasurer Balboa Life Insurance Company of New York	2011
Michael Parsons* New Hartford, NY	President and Chief Executive Officer First Source Federal Credit Union	2011
Bruce Shay Dellwood, MN	Executive Vice President Minnesota Life Insurance Company	2011
William Spearman* Lake Katrine, NY	President and Chief Executive Officer Mid-Hudson Valley Federal Credit Union	2011

Name and Residence	Principal Business Affiliation	Year First Elected
Nancy Swanson Bayport, MN	Vice President Minnesota Life Insurance Company	2011
Warren Zaccaro Minnetonka, MN	Executive Vice President Minnesota Life Insurance Company	2011

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

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:

Name	Title
Christopher Hilger	President and Chief Executive Officer
David LePlavy	Treasurer
Mark Geldernick *	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 ceased writing new business in 2011.

The Company is licensed to transact business in New York only. The Company principally wrote level term products with face amounts ranging from $25,000 to $400,000. Marketing of all lines of business was discontinued early in 2011, in anticipation of the impending sale of the Company to MLIC. The Company continues to service its closed block of Outstanding Monthly Balance ("OMB") credit life and credit disability business. The Company began marketing a group accidental death product in 2007 to members of Countrywide Home Loans, which became Bank of America Home Loans in 2008. The Company discontinued marketing its group accidental death product in 2008 when BAC became the ultimate parent. The Company continues to service the closed block of group accidental death business.

Currently the Company has no sales force as it does not plan to market or issue any new products. During the examination period the Company's agency operations were conducted on a general agency and direct response basis. Banco Popular affiliated agents generated all of the Company's term life insurance business. Group accidental death and dismemberment business was sold on a direct response basis.

E. Reinsurance

As of December 31, 2011, the Company had reinsurance treaties in effect with three companies, of which two were authorized. The Company's life and accident and health business is reinsured on a coinsurance basis.

The maximum retention limit for individual life contracts is $250,000. The total face amount of life insurance ceded as of December 31, 2011, was $25,932,200, which represents 50% of the total face amount of life insurance in force, all of which was authorized or accredited. Reserve credit taken for accident and health reinsurance ceded to an unauthorized company, totaling $11,796, was supported by funds withheld.

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

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 (decline) during the period under review:

	December 31, 2006	December 31, 2011	Increase (Decrease)
Admitted assets	$16,445,077	$18,964,239	$2,519,162
Liabilities	$ 835,323	$ 539,591	$ (295,732)
Common capital stock	$ 2,000,000	$ 2,000,000	$ 0
Gross paid in and contributed surplus	10,005,554	11,705,554	1,700,000
Additional deferred tax asset admitted	0	120,685	120,685
Unassigned funds (surplus)	3,604,200	4,598,410	994,210
Total capital and surplus	$15,609,754	$18,424,649	$2,814,895
Total liabilities, capital and surplus	$16,445,077	$18,964,239	$2,519,162

The Company's invested assets as of December 31, 2011, were mainly comprised of bonds (76.0%), and cash and short-term investments (23.9%).

The Company's entire bond portfolio, as of December 31, 2011, was comprised of investment grade obligations.

The following has been extracted from the Exhibits of Accident and Health Insurance in the filed annual statements for each of the years under review:

	Group				
	2007	2008	2009	2010	2011
Outstanding, end of previous year	0	2,485	4,572	4,761	4,762
Issued during the year	2,485	2,087	189	1	0
Other net changes During the year	0	0	0	0	(177)
Outstanding, end of current year	2,485	4,572	4,761	4,762	4,585

The Company began marketing a group accidental death product in 2007. The Company did not correctly report deductions in the Exhibit of Accident and Health from 2007 through 2010. The Company corrected the exhibit using the "other net changes" line in the Exhibit in 2011. The Company discontinued marketing the group accidental death product in 2008 but continued to honor new enrollments in 2009 and 2010.

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:

	2007	2008	2009	2010	2011
Ordinary term life	$ 31,068	$ 24,708	$ 190,124	$169,325	$126,013
Group credit life	$119,399	$ 288,502	$ 356,214	$ (7,770)	$ 10,178
Accident and health:					
Group	$ 4,786	$ 22,500	$ 76,947	$ 10,490	$212,118
Credit	540,499	733,704	787,352	(18,472)	67,909
Total accident and health	$545,285	$ 756,204	$ 864,299	$ (7,982)	$280,027
Total	$695,752	$1,069,414	$1,410,637	$153,573	$416,218

The Company ceased issuing new business in October of 2011. As of the date of this report all lines of business were in run off.

The Company changed ownership twice during the examination period. As a result, different products have been introduced and discontinued during the last five years. Most notably, the Company had higher levels of credit life and disability business primarily under an arrangement with American Express in the early years under examination. This arrangement was discontinued for all but open claims in 2010. This is reflected in the higher and growing results in these lines through 2009 and dropping off in 2010 once the agreement was terminated.

5. 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 KPMG LLP ("KPMG") was retained by the Company to audit the Company's combined statutory basis statements of financial position and the related statutory-basis statements of operations, capital and surplus, and cash flows as of December 31, 2007.

PricewaterhouseCoopers LLC was retained by the Company to audit the Company's combined statutory basis statements of financial position and the related statutory-basis statements of operations, capital and surplus, and cash flows as of December 31, 2008 through December 31, 2010 and KPMG was again retained by the Company to audit the Company's combined statutory basis statements of financial position and the related statutory-basis statements of operations, capital and surplus, and cash flows as of December 31, 2011.

KPMG and PricewaterhouseCoopers LLC 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.

B. Net Admitted Assets

Bonds	$13,571,635
Cash, cash equivalents and short term investments	4,276,092
Receivable for securities	18,249
Investment income due and accrued	128,849
Premiums and considerations:	
Deferred premiums, agents' balances and installments booked but deferred and not yet due	50,957
Reinsurance:	
Amounts recoverable from reinsurers	45,632
Current federal and foreign income tax recoverable and interest thereon	643,542
Net deferred tax asset	187,209
Miscellaneous receivables	42,074
Total admitted assets	$18,964,239

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	$ 161,126
Aggregate reserve for accident and health contracts	52,712
Contract claims:	
Life	40,709
Accident and health	8,030
Contract liabilities not included elsewhere:	
Interest maintenance reserve	51,251
Commissions to agents due or accrued	282
General expenses due or accrued	21,300
Taxes, licenses and fees due or accrued, excluding federal income taxes	89,312
Miscellaneous liabilities:	
Asset valuation reserve	8,570
Reinsurance in unauthorized companies	14,859
Funds held under reinsurance treaties with unauthorized reinsurers	24,404
Payable to parent, subsidiaries and affiliates	67,035
Total liabilities	$ 539,591
Common capital stock	$ 2,000,000
Gross paid in and contributed surplus	11,705,554
Additional deferred tax asset admitted	120,685
Unassigned funds (surplus)	4,598,410
Surplus	$16,424,649
Total capital and surplus	$18,424,649
Total liabilities, capital and surplus	$18,964,239

D. Condensed Summary of Operations

	2007	2008	2009	2010	2011
Premiums and considerations	$1,710,999	$1,702,353	$ 858,232	$ 206,323	$165,464
Investment income	843,606	703,306	655,398	712,532	598,725
Commissions and reserve adjustments on reinsurance ceded	55,388	47,963	43,267	63,064	28,846
Miscellaneous income	(1,111)	38,325	(439)	(169)	(14,923)
Total income	$2,608,882	$2,491,947	$1,556,458	$ 981,750	$778,113
Benefit payments	$ 725,379	$ 266,346	$ 231,856	$ 183,916	$51,156
Increase in reserves	(57,797)	(98,987)	(83,179)	(43,304)	(4,675)
Commissions	260,972	198,337	128,519	56,010	32,416
General expenses and taxes	654,063	520,541	267,621	529,144	313,985
Increase in loading on deferred and uncollected premiums	2,000	(6,414)	3,038	1,578	(29,665)
Total deductions	$1,584,617	$ 879,823	$ 547,855	$ 727,344	$363,218
Net gain from operations	$1,024,265	$1,612,124	$1,008,603	$ 254,406	$414,895
Federal and foreign income taxes Incurred	328,513	542,710	(402,034)	100,833	(1,322)
Net gain from operations before net realized capital gains	$ 695,752	$1,069,414	$1,410,637	$ 153,572	$416,217
Net realized capital (losses)	0	0	(172,269)	(100,168)	(22,503)
Net income	$ 695,752	$1,069,414	$1,238,368	$ 53,405	$393,714

Net income fluctuations were driven largely by the changing business strategies of the different owners over the examination period. Termination of credit life and disability business with American Express, a shift to individual term life and group accidental death and dismemberment business and the discontinuation of marketing of new business in 2011 are all contributing factors to the net income pattern. The increase in net income in 2011 as compared to 2010 is primarily due to lower claim activity on the credit disability block of business, lower expenses due to the discontinuation of marketing new products and lower taxes.

E. Capital and Surplus Account

	2007	2008	2009	2010	2011
Capital and surplus, December 31, prior year	$15,609,754	$16,291,427	$17,318,464	$17,833,934	$17,427,885
Net income	$ 695,752	$ 1,069,414	$ 1,238,368	$ 53,405	$ 393,714
Change in net deferred income tax	14,373	(9,930)	(709,679)	359,832	59,686
Change in non-admitted assets and related items	(12,687)	7,548	(44,421)	(787,561)	(22,380)
Change in liability for reinsurance in unauthorized companies	0	0	0	(33,164)	18,305
Change in asset valuation reserve	(15,766)	5,484	22,791	0	(8,570)
Surplus adjustments:					
Paid in	0	1,700,000	0	0	0
Correction of an error	0	(1,745,479)	0	0	445,174
SSAP 10R deferred tax adjustment	0	0	8,411	1,439	110,835
Net change in capital and surplus for the year	$ 681,673	$ 1,027,037	$ 515,470	$ (406,049)	$ 996,764
Capital and surplus, December 31, current year	$16,291,427	$17,318,464	$17,833,934	$17,427,885	$18,424,649

During 2008, the Company performed a review of its rating practices for compliance with statutory requirements. During this review, the Company determined that it charged rates in excess of rates permitted on certain policies. In accordance with Statutory Standard Accounting Principle No. 3 – Accounting changes and correction of errors, the premium refund plus interest due to policyholders, net of return commission and premium tax, were reported as a correction of an error through adjustment in surplus in 2008. The adjustment, net of tax of $1 million, decreased surplus by approximately 1.7 million.

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 215.5 (c) of Department Regulation No. 34 states, in part:

> "An advertisement of a policy shall contain in a prominent place and style the appropriate statement for the coverage provided, as determined by the definitions in 11 NYCRR 52.5-52.11 (Regulation 62), as follows:
>
> (6) This policy provides ACCIDENT insurance only. It does NOT provide basic hospital, basic medical or major medical insurance as defined by the New York State Insurance Department. The expected benefit ratio for this policy is _____ %. This ratio is the portion of future premiums which the company expects to return as benefits, when averaged over all people with this policy. . . ."

The examiner reviewed all nine of the Company's accidental death and dismemberment enrollment advertisements. None of the advertisements contained the appropriate statement of coverage provided indicating that the policy provides ACCIDENT insurance only, that it does NOT provide basic hospital, basic medical or major medical insurance as defined by the New York State Insurance Department, the expected benefit ratio for the policy and an explanation of the expected benefit ratio.

The Company violated Section 215.5(c)(6) of Department Regulation No. 34 by failing to include an appropriate statement of coverage provided in its group accidental death and dismemberment advertisements.

Section 215.6(c)(3) of Department Regulation No. 34 states:

> "When an advertisement contains an application to be completed by the applicant and returned by mail for a direct response insurance product, such application shall be identical except for size to the application form approved for the policy being offered."

The Company's group accidental death and dismemberment advertisements contained an enrollment application to be completed by the applicant and returned to the Company by mail. The application in the advertisement differed from the approved policy form in that the advertisement application omitted the fraud warning statement and the policy form number. (Please see Section 6B of this report for additional policy form violations related to these group accidental death and dismemberment enrollment applications)

The Company violated Section 215.6(c)(3) of Department Regulation No. 34 by failing to use an approved application form in their advertisements for group direct response accidental death and dismemberment insurance.

Section 219.4 (p) of Department Regulation No. 34-A states, in part:

> "In all advertisements made by an insurer, or on its behalf, the name of the insurer shall be clearly identified, together with the name of the city, town or village in which it has its home office in the United States . . . If a specific policy or policy series is being advertised, the form or series number or other appropriate description shall be shown. An advertisement shall not use a trade name, an insurance group designation, name of the parent company or affiliate of the insurer . . . service mark, slogan, symbol or other device or reference if such use would have the tendency to mislead or deceive as to the true identity of the insurer, or create the impression that someone other than the insurer would have any responsibility for the financial obligation under a policy."

The Company's term life advertisements prominently displayed "Popular Insurance" or "Popular Life Insurance" on certain advertisements. Such identification of Banco Popular, a financial institution that was merely acting as the Company's general agent, could have the potential effect of misleading the prospective purchaser as to the true identity of the insurer. Also, the advertisements did not display the policy form number advertised.

The Company violated Section 219.4(p) of Department Regulation No. 34-A by using advertisements which created the impression that someone other than the insurer would be responsible for the financial obligations under the policy by prominently displaying "Popular Insurance" or "Popular Life Insurance" on the advertisements and by not including the policy form number on the advertisement.

Section 219.5(a) of Department Regulation No. 34-A states, in part:

> "Each insurer shall maintain at its home office a complete file containing a specimen copy of every . . . advertisement . . . with a notation indicating the manner and extent of distribution and the form number of any policy advertised."

The Company did not maintain at its home office a complete file containing the extent of distribution for its term life advertisements.

The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain at its home office a complete file containing the extent of distribution for its term life advertisements.

B. Underwriting and Policy Forms

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

Section 243.2(a) of Department Regulation No.152 states, in part:

> ". . . every insurer shall maintain its claims, rating, underwriting, marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part."

The examiner requested 66 non-contributory group accidental death and dismemberment enrollment applications. The Company did not maintain copies of applications for any of its non-contributory group accidental death and dismemberment business.

The Company violated Section 243.2(a) of Department Regulation No. 152 by failing to maintain copies of applications for the non-contributory group accidental death and dismemberment business.

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 and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with the law. . ."

The examiner reviewed five contributory group accidental death and dismemberment enrollment applications. The Company used enrollment applications which differed from the approved versions to issue its contributory group accidental death and dismemberment business

during the examination period. (Please see Section 6A of this report for additional policy form violations related to these group accidental death and dismemberment enrollment applications)

The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing contributory group accidental death and dismemberment policies using applications which differed from the approved version.

Section 403(d) of the New York Insurance Law states:

> "All applications for commercial insurance, individual, group or blanket accident and health insurance and all claim forms, except as provided for in subsection (e) of this section, shall contain a notice in a form approved by the superintendent that clearly states in substance the following:
>
> "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.""

The enrollment applications provided to prospective insureds for contributory group accidental death and dismemberment business omitted the fraud warning notice.

The Company violated Section 403(d) of the New York Insurance Law by using an application that did not contain the fraud warning notice. A similar violation appeared in the prior report on examination.

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 420.18(a) of Department Regulation No. 169 states, in part:

> "A valid authorization to disclose nonpublic personal health information pursuant to this Part shall be in written or electronic form and shall contain all of the following . . .
>
> (5) …that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation"

For its term life insurance business, the Company's privacy authorization form to disclose non-public personal health information did not include language concerning the customer's right to revoke the authorization at any time and the procedure for making a revocation.

The Company violated Section 420.18(a) of Department Regulation No. 169 by failing to include language in their privacy authorization form concerning the customer's right to revoke the authorization to disclose non-public personal health information at any time and the procedure for making a revocation.

Section 2611 of New York Insurance Law states, in part:

> "(a) 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 examiner reviewed 11 term life applications that required HIV testing of the insured. In five cases, the Company required the HIV testing without first obtaining the written informed consent of such individuals prior to such testing and without providing general information about AIDS and the transmission of HIV infection.

The Company violated section 2611(a) of New York Insurance Law by failing to obtain the written informed consent of term life insurance applicants prior to performing HIV testing and without providing general information about AIDS and the transmission of HIV infection.

The prior report on examination contained a recommendation that the Company send an explanation of benefit letter to the beneficiary or the deceased's estate indicating the distribution of the death benefit between any creditors and the beneficiary or the deceased's estate for the American Express group credit policy.

The Company sent explanation of benefit letters to the beneficiary or the deceased's estate in 2007 and 2008. However, starting in 2009, upon the group policyholder's request, the Company stopped sending the explanation of benefit letters to the beneficiary or the deceased's estate. The Company continues to handle a small number claims under this group credit policy.

The examiner recommends that the Company immediately resume sending an explanation of benefit letter to the beneficiary or the deceased's estate indicating the distribution of the death benefit between any creditors and the beneficiaries or the deceased's estate. This recommendation appeared in the prior report on examination.

7. 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:

Item	Description
A	The examiner recommended that only the Company's equitable share of marketing expense be allocated to it pursuant to Section 1505(a)(3) of the New York Insurance Law and that the Company recover the $176,053.81 allocated in error by BLIC. The Company was charged only for its equitable share of marketing expense based on the approved service agreements during the examination period. The Company also recovered the $176,053.81 of marketing expense in August 2007.
B	The Company violated Section 1411(a) of the New York Insurance law by failing to authorize and approve its investment activities during the examination period. The Company's board of directors authorized and approved its investment activities during the examination period.
C	The examiner recommended that the Company determine the reasons for the high lapse ratios related to its Platform Term Life product when actual persistency rates deviated significantly from expectations, including performing agent field investigations if necessary to identify potential poor agent sales practices in selling this product. The last examination report was filed in September 2010 and the Company ceased writing business effective April 2011; therefore this recommendation was never implemented.
D	The examiner recommended that when the Company terminated the certificate of appointment of any agent it should report it to the Department within thirty days pursuant to Section 2112(d) of the New York Insurance Law. The Company complied with Section 2122 (d) of the New York Insurance Law during the examination period. The Company terminated its entire agency force during the examination period and is no longer marketing or writing any new business. All terminations were reported to the Department.

Item	Description
E	The Company violated Section 403(d) of the New York Insurance Law by using a claim form that did not contain the complete fraud warning required. The Company corrected the fraud warning language on claim forms used for the credit line business which was the subject of the violation that appeared in the prior report. However, during this examination period, the Company used claim forms for its term life business that did not contain the required fraud warning. (See Item 5C of this report)
F	The examiner recommends that the Company comply with Department Regulation No. 27-A and not pay commissions on a group credit policy to a group policyholder or its affiliate in the future. The Company did not pay commissions to a group policyholder or its affiliate during the examination period for the group credit policy. The group credit policy was terminated in 2010.
G	The examiner recommends that the Company send an explanation of benefit letter to the beneficiary or the deceased's estate indicating the distribution of the death benefit between the creditor and the beneficiary or the deceased's estate. The Company sent corrected explanation of benefit letters to the beneficiaries or the deceased's estate in 2007 and 2008. However, starting in 2009, upon the policyholder's request, the Company stopped sending the explanation of benefit letters to the beneficiary or the deceased's estate. A repeat recommendation is contained in this report. (See Item 6C of this report)

8. SUMMARY AND CONCLUSIONS

Following are the violations and recommendation contained in this report:

Item	Description	Page No.
A	The Company violated Section 215.5(c)(6) of Department Regulation No. 34 by failing to include an appropriate statement of coverage provided in its group accidental death and dismemberment advertisements.	17
B	The Company violated Section 215.6(c)(3) of Department Regulation No. 34 by failing to use an approved application form in their advertisements for group direct response accidental death and dismemberment insurance.	18
C	The Company violated Section 219.4(p) of Department Regulation No. 34-A by using advertisements which created the impression that someone other than the insurer would be responsible for the financial obligations under the policy by prominently displaying “Popular Insurance” or “Popular Life Insurance” on the advertisements and by not including the policy form number on the advertisement.	18
D	The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain at its home office a complete file containing the extent of distribution for its term life advertisements.	19
E	The Company violated Section 243.2(a) of Department Regulation No. 152 by failing to maintain copies of applications for the non-contributory group accidental death and dismemberment business.	19
F	The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing contributory group accidental death and dismemberment policies using applications which differed from the approved version.	20
G	The Company violated Section 403(d) of the New York Insurance Law by using an application that did not contain the fraud warning notice.	20

Item	Description	Page No.
H	The Company violated Section 420.18(a) of Department Regulation No. 169 by failing to include language in their privacy authorization form concerning the customer's right to revoke the authorization to disclose non-public personal health information at any time and the procedure for making a revocation.	21
I	The Company violated section 2611(a) of New York Insurance Law by failing to obtain the written informed consent of term life insurance applicants prior to performing HIV testing and without providing general information about AIDS and the transmission of HIV infection.	21
J	The examiner recommends that the Company immediately resume sending an explanation of benefit letter to the beneficiary or the deceased's estate indicating the distribution of the death benefit between any creditors and the beneficiaries or the deceased's estate. This recommendation appeared in the prior report on examination.	21

Respectfully submitted,

/s/
Manish Gajiwala
Senior Insurance Examiner

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

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

/s/
Manish Gajiwala

Subscribed and sworn to before me

this_____ day of _____

APPOINTMENT NO. 30803

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:

MANISH GAJIWALA

as a proper person to examine the affairs of the

BALBOA LIFE INSURANCE 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 17th day of January, 2012

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By: _____

MICHAEL MAFFEI
ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU