



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY
OF NEW YORK

CONDITION:

DECEMBER 31, 2010

DATE OF REPORT:

FEBRUARY 13, 2012

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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AS OF

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EXAMINER:

IJEOMA NDIKA

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

January 2, 2014

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

Sir:

In accordance with instructions contained in Appointment No. 30659, dated February 24, 2011 and annexed hereto, an examination has been made into the condition and affairs of American Equity Investment Life Insurance Company of New York, hereinafter referred to as “the Company,” at its home office located at 1979 Marcus Avenue, Suite 210, Lake Success, New York 11042.

On October 3, 2011, the Insurance Department merged with the Banking Department to create the New York State Department of Financial Services. 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. SCOPE OF EXAMINATION

The examination of the Company was a full scope examination as defined in the NAIC Financial Condition Examiners Handbook, 2011 Edition (the “Handbook”). The examination covers the three-year period from January 1, 2008 to December 31, 2010. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2010 but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

In the course of the examination, a review was also made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The results of this review are contained in item 6 of this report.

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

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

- Pricing/Underwriting
- Reserving
- Operational
- Strategic

- Credit
- Market
- Liquidity
- Legal
- Reputational

The Company was audited annually, for the years 2008 through 2010, by the accounting firm of KPMG LLP. The Company received an unqualified opinion in all years. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination. The Company and American Equity Investment Life Insurance Company of Iowa (“AELIC”), the Company’s parent, share common controls and management. AELIC has an internal audit department and a separate internal control department which was given the task of assessing the internal control structure and compliance with the Sarbanes-Oxley Act of 2002 (“SOX”). Where applicable, SOX workpapers and reports were reviewed and portions were relied upon for this examination.

The examiner reviewed the corrective actions taken by the Company with respect to the violations and recommendations contained in the prior report on examination. The results of the examiner’s review are contained in item 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.

2. DESCRIPTION OF COMPANY

A. History

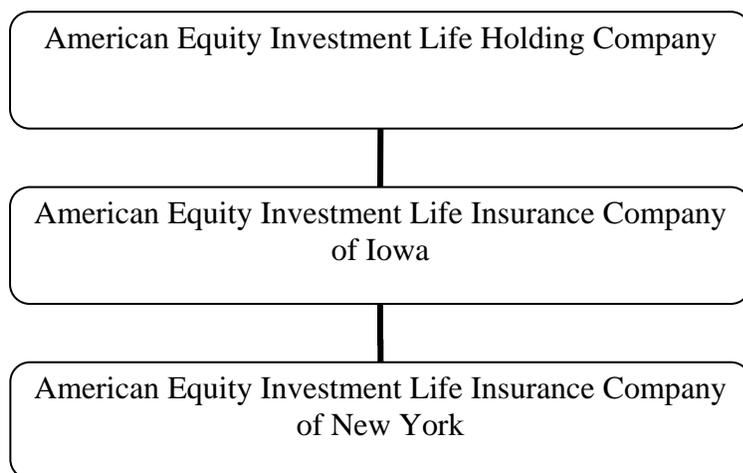
The Company was incorporated as a stock life insurance company under the laws of New York on March 15, 2001, was licensed on June 5, 2001 and commenced business on July 1, 2001. Initial resources of \$10,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$8,000,000, were provided through the sale of 2,000,000 shares of common stock (with a par value of \$1 each) for \$5 per share. As of December 31, 2010, the Company reported total common capital stock and paid in and contributed surplus of \$2,000,000 and \$27,948,754 respectively.

B. Holding Company

The Company is a wholly owned subsidiary of AELIC, an Iowa life insurance company. AELIC is in turn a wholly owned subsidiary of American Equity Investment Life Holding Company (“AEL”), an Iowa life insurance holding company. AEL is the ultimate parent of the Company.

C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2010 follows:



D. Service Agreements

The Company had two 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
Management Services Agreement Department File No. 29073A	3/19/2001	AELIC	The Company	Agent licensing, commission payment, actuarial services, annuity policy issuance and service, accounting and financial, compliance and market conduct, general and informational services and marketing.	2008: \$(365,895) 2009: \$(366,694) 2010: \$(413,509)
Investment Advisory Agreement Department File No. 29073A	3/22/2001	AEL	The Company	Investment advisory services.	2008: \$(266,930) 2009: \$(259,306) 2010: \$(295,968)

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

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

E. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 17 directors. The number of directors shall be increased to not less than 13 within one year following the end of the calendar year in which the admitted assets of the Company exceed one and one-half billion dollars. 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, 2010, the board of directors consisted of ten members. Meetings of the board are held from time to time as determined by resolution of the board and at least two regular meetings are held in each calendar year.

The ten board members and their principal business affiliation, as of December 31, 2010, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Alexander M. Clark* New York, NY	Managing Director Sanders Morris Harris	2005
James M. Gerlach Des Moines, IA	Executive Vice President American Equity Investment Life Insurance Company of New York	2001
Robert L. Hilton* Birmingham, AL	Retired, Former Executive Vice President of Government Relations and Marketing Amtrust Financial Services	2005
Robert L. Howe* Des Moines, IA	Retired, Former Deputy Commissioner and Chief Examiner Iowa Insurance Division	2005
John M. Matovina Des Moines, IA	Chief Financial Officer American Equity Investment Life Insurance Company of New York	2001
David J. Noble Longboat Key, FL	President and Chairman of the Board American Equity Investment Life Insurance Company of New York	2001
Debra J. Richardson Des Moines, IA	Chief Administrative Officer and Secretary American Equity Investment Life Insurance Company of New York	2001
Thomas S. Swain New York, NY	Vice President American Equity Investment Life Insurance Company of New York	2001
Wendy L. Waugaman Des Moines, IA	Executive Vice President American Equity Investment Life Insurance Company of New York	2001

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Harley A. Whitfield* Spirit Lake, IA	Retired, Former Partner Whitfield & Eddy, PLC	2001

* 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.

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 Company's independent audit committee is comprised 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. The examiner's review of the Company's independent audit committee meeting minutes did not reveal any evidence of the committee evaluating the performance of the principal officers of the Company or any recommendations for the compensation of such principal officers.

The Company violated Section 1202(b)(2) by failing to have its independent audit committee evaluate the performance of the principal officers of the Company and recommend the compensation of such principal officers. This violation appeared in the prior report on examination.

The following is a listing of the principal officers of the Company as of December 31, 2010:

<u>Name</u>	<u>Title</u>
David J. Noble	President and Chairman of the Board
Terry A. Reimer*	Chief Operations Officer and Executive Vice President
John M. Matovina	Chief Financial Officer
Debra J. Richardson	Chief Administrative Officer and Secretary
James M. Gerlach	Executive Vice President
Wendy L. Waugaman	Executive Vice President
Jeff D. Lorenzen	Senior Vice President, Investments
Ronald J. Grensteiner	Vice President
Matthew Hartle	Vice President, Internal Audit
Ted M. Johnson	Vice President, Controller and Treasurer
Judith A. Naanep	Vice President, Chief Actuary

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

3. TERRITORY AND PLAN OF OPERATIONS

The Company is authorized to write life insurance and annuities as defined in paragraphs 1 and 2 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business only in New York State. In 2010, 98% of annuity considerations were received from New York. The Company did not write any life business during the examination period. Policies are written on a non-participating basis.

A. Statutory and Special Deposits

As of December 31, 2010, the Company had \$400,000 (par value) of United States Treasury Bonds on deposit with the State of New York, its domiciliary state, for the benefit of all policyholders, claimants and creditors of the Company.

B. Direct Operations

The Company reported 2,297 fixed annuities in force as of December 31, 2010 of which 31% were flexible premium deferred annuity contracts, 66% were single premium deferred annuity contracts and 3% were single premium immediate annuity contracts. The Company has no separate accounts

During the fourth quarter of 2010, the Company discontinued the sale of their single premium deferred annuity product. In January, 2011, the Company lowered the flexible premium annuity commission rates for issue ages 0 to 70 by 25% and lowered the flexible premium annuity commission rates for issue ages 71 to 75 by 50%. The Company stopped offering flexible premium deferred annuity contracts to anyone whose issue age at the time of issuance exceeds 75.

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

C. Reinsurance

As of December 31, 2010, the Company had no reinsurance treaties in effect.

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:

	December 31, <u>2007</u>	December 31, <u>2010</u>	Increase (Decrease)
Admitted assets	\$ <u>119,243,172</u>	\$ <u>175,194,883</u>	\$ <u>55,951,711</u>
Liabilities	\$ <u>85,756,646</u>	\$ <u>149,968,290</u>	\$ <u>64,211,644</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	27,948,754	27,948,754	0
Unassigned funds (surplus)	<u>3,537,772</u>	<u>(4,884,949)</u>	<u>(8,422,721)</u>
Total capital and surplus	\$ <u>33,486,526</u>	\$ <u>25,226,593</u>	\$ <u>(8,259,933)</u>
Total liabilities, capital and surplus	\$ <u>119,243,172</u>	\$ <u>175,194,883</u>	\$ <u>55,951,711</u>

The significant growth in the Company's assets is due to an increase in sales of its fixed annuity products.

The Company's invested assets as of December 31, 2010, were mainly comprised of bonds (94.0%) and cash and short term investments (5.0%).

The Company's entire bond portfolio, as of December 31, 2010, was comprised of investment grade obligations.

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>2008</u>	<u>2009</u>	<u>2010</u>
Outstanding, end of previous year	1,679	1,651	1,727
Issued during the year	63	164	668
Other net changes during the year	<u>(91)</u>	<u>(88)</u>	<u>(98)</u>
Outstanding, end of current year	<u>1,651</u>	<u>1,727</u>	<u>2,297</u>

The increase in ordinary annuities issued from 2009 to 2010 is primarily due to the attractiveness of safe money products in volatile markets and lower interest rates on competing products.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Ordinary:			
Individual annuities	\$1,013,660	\$(5,159,995)	\$(1,663,600)
Supplementary contracts	<u>323,654</u>	<u>(76,202)</u>	<u>123,907</u>
Total ordinary	<u>\$1,337,314</u>	<u>\$(5,236,196)</u>	<u>\$(1,539,693)</u>

The significant fluctuation in the net gain (loss) from operations is mainly due to the additional reserves that were recorded as a result of the Department's asset adequacy analysis. The analysis for 2009 increased the additional reserves by approximately \$7.0 million. The analysis for 2010 increased the additional reserves by approximately \$2.0 million.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2010, as contained in the Company's 2010 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, 2010 filed annual statement.

A. Independent Accountants

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

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

B. Net Admitted Assets

Bonds	\$160,834,900
Cash, cash equivalents and short term investments	9,418,651
Other invested assets	1,550,490
Investment income due and accrued	1,813,801
Net deferred tax asset	1,103,370
State income tax recoverable	<u>473,672</u>
Total admitted assets	<u>\$175,194,883</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$145,628,975
Liability for deposit-type contracts	1,874,959
Interest maintenance reserve	140,627
General expenses due or accrued	11,337
Taxes, licenses and fees due or accrued, excluding federal income taxes	390,501
Current federal and foreign income taxes	1,335,731
Remittances and items not allocated	208,140
Asset valuation reserve	372,871
Payable to parent, subsidiaries and affiliates	<u>5,150</u>
Total liabilities	<u>\$149,968,290</u>
Common capital stock	\$ 2,000,000
Gross paid in and contributed surplus	27,948,754
Application of SSAP 10R	162,788
Unassigned funds (surplus)	<u>(4,884,949)</u>
Surplus	<u>\$ 23,226,593</u>
Total capital and surplus	<u>\$ 25,226,593</u>
Total liabilities, capital and surplus	<u>\$175,194,883</u>

D. Condensed Summary of Operations

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Premiums and consideration	\$ 3,811,891	\$ 11,203,792	\$54,647,865
Investment income	<u>6,569,080</u>	<u>6,582,180</u>	<u>7,098,174</u>
Total income	<u>\$10,380,971</u>	<u>\$ 17,785,972</u>	<u>\$61,746,039</u>
Benefit payments	\$ 8,603,354	\$ 7,108,472	\$ 8,291,893
Increase in reserves	(1,426,142)	14,057,353	50,160,672
Commissions	266,730	892,917	3,721,242
General expenses and taxes	<u>920,846</u>	<u>623,350</u>	<u>646,316</u>
Total deductions	<u>\$ 8,364,788</u>	<u>\$22,682,092</u>	<u>\$62,820,123</u>
Net gain (loss)	\$ 2,016,183	\$(4,896,118)	\$ (1,074,084)
Federal and foreign income taxes incurred	<u>678,869</u>	<u>340,078</u>	<u>465,610</u>
Net gain (loss) from operations before net realized capital gains	\$ 1,337,314	\$(5,236,196)	\$ (1,539,693)
Net realized capital gains (losses)	<u>(1,633,029)</u>	<u>(2,131,681)</u>	<u>62,364</u>
Net income	<u>\$ (295,715)</u>	<u>\$ (7,367,877)</u>	<u>\$ (1,477,330)</u>

The increase in reserves is mainly due to the increase in premiums and considerations and also includes the additional reserves that were recorded as a result of the Department's asset adequacy analysis. There is a \$50 million increase in reserves in 2010 of which \$2 million is attributable to the asset adequacy analysis.

E. Capital and Surplus Account

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Capital and surplus, December 31, prior year	<u>\$33,486,526</u>	<u>\$33,412,008</u>	<u>\$26,568,300</u>
Net income	\$ (295,715)	\$ (7,367,877)	\$ (1,477,330)
Change in net deferred income tax	501,784	2,688,286	817,956
Change in non-admitted assets and related items	(492,945)	(2,294,380)	(344,008)
Change in asset valuation reserve	212,358	(422)	(370,428)
Application of SSAP 10R	<u>0</u>	<u>130,685</u>	<u>32,103</u>
Net change in capital and surplus for the year	\$ <u>(74,518)</u>	\$ <u>(6,843,708)</u>	\$ <u>(1,341,707)</u>
Capital and surplus, December 31, current year	<u>\$33,412,008</u>	<u>\$26,568,300</u>	<u>\$25,226,593</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 annuity contracts.

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

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files 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 and surrenders. 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. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 308(a) of the New York Insurance Law by failing to file a copy of its tax allocation agreement with the Department in accordance with Department Circular Letter No. 33 (1979).</p> <p>The Company filed its tax allocation agreement with the Department.</p>
B	<p>The Company violated Section 1202(b)(1) of the New York Insurance Law and its own by-laws by failing to have at least one-third of the members of the executive and investment committees be persons who are not officers or employees of the Company or any entity controlling, controlled by, or under common control with the Company.</p> <p>The Company now has two out of the six members of the executive and investment committees who are not officers or employees of the Company or any entity controlling, controlled by, or under common control with the Company.</p>
C	<p>The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to have its independent audit committee evaluate the performance of the principal officers of the Company and recommend the compensation of such principal officers.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 2 of this report)</p>
D	<p>The Company violated Section 4211(a) of the New York Insurance Law by failing to file a copy of the notice of election with the Superintendent at least ten days before the day of such election.</p> <p>The Company filed a copy of the notice of election with the Superintendent at least ten days before the day of each election.</p>

<u>Item</u>	<u>Description</u>
E	<p>The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain their investment committee minutes at their principal office in this state.</p> <p>The Company now maintains its investment committee minutes at their principal office in this state.</p>
F	<p>The examiner recommends that the Company incorporate adjustments to both reserve assumptions and reserve methodology in the manner agreed upon with the Department beginning with the Company's December 31, 2009 valuation and all subsequent valuations.</p> <p>The Company incorporated the recommended adjustments.</p>
G	<p>The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain a complete advertising file with a notation indicating the manner and extent of distribution.</p> <p>The Company now maintains a complete advertising file with a notation indicating the manner and extent of distribution.</p>
H	<p>The examiner recommends that the Company make a better effort to comply with the requirements of Department Regulation No. 60.</p> <p>The Company is in compliance with the requirements of Department Regulation No. 60.</p>
I	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form which was not filed with and approved by the Superintendent.</p> <p>The Company has discontinued the use of the policy form.</p>
J	<p>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.</p> <p>The Company updated their claim forms to include the required language.</p>

<u>Item</u>	<u>Description</u>
K	<p>The Company violated Section 243.3(c) of Department Regulation No. 152 since its record retention plan failed to fully disclose the records being retained, the method of retention, and the safeguards established to prevent alteration of the records.</p> <p>The Company's revised retention policy now fully discloses the records being retained, the method of retention and the safeguards established to prevent alteration of the records.</p>
L	<p>The examiner recommends that the Company have its revised record retention plan reviewed and approved by its board of directors.</p> <p>The revised record retention plan has been approved by the board of directors.</p>
M	<p>The Company violated Section 4228(h) of the New York Insurance Law by failing to sign the supporting demonstrations related to the actuarial statements of self support for the Company's primary policy forms.</p> <p>The Company has not issued new policy forms since the last examination. However, the Company provided a commitment that future demonstrations associated with new policy forms will be signed as required by Section 4228(h) of the New York Insurance Law.</p>
N	<p>The examiner recommends that the Company implement changes for documenting its pricing and product development in the manner agreed upon with the Department.</p> <p>The Company implemented the recommended changes.</p>

8. SUMMARY AND CONCLUSIONS

Following is the violation contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to have its independent audit committee evaluate the performance of the principal officers of the Company and recommend the compensation of such principal officers. This violation appeared in the prior report on examination.	7

Respectfully submitted,

_____/s/_____
Ijeoma Ndika
Senior Insurance Examiner

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

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

_____/s/_____
Ijeoma Ndika

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 30659

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, JAMES J. WRYNN, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

IJEOMA NDIKA

as a proper person to examine into the affairs of the

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY OF NEW YORK

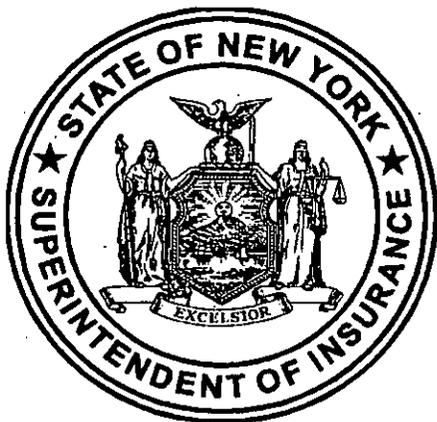
and to make a report to me in writing of the condition of the said

COMPANY

with such other information as 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 24th day of February, 2011



JAMES J. WRYNN
Superintendent of Insurance

James J. Wrynn
Superintendent