

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON MARKET CONDUCT EXAMINATION
OF THE
COMPANION LIFE INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

APRIL 30, 2013

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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EXAMINER:

IJEOMA NDIKA

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Anthony J. Albanese
Acting Superintendent

March 4, 2015

Honorable Anthony J. Albanese
Acting Superintendent of Financial Services
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 31006, dated May 8, 2013 and annexed hereto, an examination has been made into the condition and affairs of Companion Life Insurance Company, hereinafter referred to as “the Company,” at its home office located at 888 Veterans Memorial Highway, Suite 515, Hauppauge, New York, 11788.

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 and violations contained in this report are summarized below.

- The Company violated several sections of Department Regulation No. 60.
- The Company violated Section 3204(d) of the New York Insurance Law when the Company failed to obtain the written consent from the applicants when alterations were made to the applications after the issuance of the term life policies.
- The Company violated Section 4223(k)(1) of the New York Insurance Law by failing to disclose the death benefit on the annual statement sent to certain contract holders.
- The Company violated Section 3211(b)(2) of the New York Insurance Law having premium due notices that lack the language “ except as to the right to any cash surrender or nonforfeiture benefit”.
- The Company violated Section 86.4(d) of Department Regulation No. 95 by not placing the fraud warning statement immediately above the space provided for signature of the person executing the claim.

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2008 through December 31, 2011. As necessary, the examiner reviewed matters 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 review of market conduct activities and utilized the National Association of Insurance Commissioners' Market Regulations Handbook or such other examination procedures, as deemed appropriate, in such review.

The examiner reviewed the corrective actions taken by the Company with respect to the violations and recommendations contained in the prior market conduct report on examination. The results of the examiner's review are contained in item 5 of this report.

This report on examination is confined to comments on 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 June 3, 1949, was licensed on July 1, 1949 and commenced business on July 18, 1949.

B. 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 three states, namely Connecticut, New Jersey and New York. In 2011, 98.2% of life premiums, 99.3% of accident and health premiums, 97.6% of annuity considerations and 100.0% of deposit type funds were received from New York. Policies are written on a participating and non-participating basis.

The Company writes term life, universal life, group life, individual fixed and deferred annuities, group annuities and group variable annuities. The Company targets the middle market consumer and owners of small businesses. Products are sold primarily through a network of Mutual of Omaha (“Mutual”) career agents, direct mail, stockbrokers, financial planners and banks. As of December 31, 2011, Mutual had 1,773 independent contract agents managed by 199 employee field managers. The Company had 138 agents in New York that were managed by 15 field managers. There are nine sales offices in New York as of December 31, 2011.

Premiums and annuity considerations increased by \$1,222,000 (1.6%) in 2011, primarily due to strong sales and persistency of ordinary life products and strong group retirement plan sales.

4. MARKET CONDUCT ACTIVITIES

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

A. Advertising and Sales Activities

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

Section 51.6(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 . . .

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

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor . . .

(9) In the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised "Disclosure Statement," any revised or additional sales material used and acknowledgement by the applicant of receipt of such revised material."

Section 51.7(b) of Department Regulation No. 60 states:

"No insurer, agent, broker, representative, officer, or employee of an insurer or any other licensee of this Department shall fail to comply with or engage in other practices that would prevent the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contract holders. Any person failing to comply with this Part, or engaging in other practices that would prevent the orderly working of this Part, shall be subject to penalties under the Insurance Law of the State of New York, which may include, but shall not be

limited to, monetary restitution, restoration of policies or contracts, removal of directors or officers, suspension or revocation of agent's, broker's or company's licenses and monetary fines.”

The examiner selected a sample of 30 external life replacements out of a population of 584 replaced life policies and a sample of 13 external and 2 internal annuity replacements out of a population of 84 replaced annuity contracts for review.

The examiner noted that in three annuity replacements and six life replacements (20%), the Company failed to present to the applicant the Important Notice and/or the Disclosure Statement prior to the date that the application was signed. The appropriate timing of the events and the receipt of replacement documentation, which occur prior to the ultimate replacement of a policy, are crucial to the assurance that an applicant was able to make an informed decision prior to their signing an application. In these nine instances the Company did not conform to the proper sequence of events.

The Company violated Section 51.7(b) of Department Regulation No. 60 by failing to comply with the orderly working of this Regulation in accomplishing its intended purpose in the protection of policyholders and contract holders when they did not conform to the proper sequence of events.

In three external life replacements (6.7%), the Company failed to furnish the insurer whose coverage was being replaced, with a completed Disclosure Statement and a copy of any proposal including the sales materials used in the sale, within ten days of receipt of the application.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced, with a completed Disclosure Statement and a copy of any proposal, including the sales materials used in the sale of the proposed life insurance policy or annuity contract, within ten days of receipt of the application. A similar violation appeared in the prior report on examination.

In six instances (13.3%) where the required forms did not meet the requirements of the Regulation, such as the value of the existing annuity was omitted from the Disclosure Statement or the agent failed to complete Part C of the Disclosure Statement, or all the required forms were not received, the Company did not have the deficiencies corrected or else reject the application within ten days from the date of receipt of the application.

The Company violated Section 51.6(b)(7) of Department Regulation No. 60, in cases where the required forms did not meet the requirements of the Regulation or were not accurate and the Company failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason for such rejection.

The review also revealed that in 13 instances (28.9%) where the policy was issued other than as applied for, in that either the face amount, rider and/or premium amount, annuity account value, and/or surrender value were revised, the Company failed to send the applicant a revised Disclosure Statement.

The Company violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to send the applicant a revised "Disclosure Statement" when the policy was issued other than as applied for. A similar violation appeared in the prior report.

B. Underwriting and Policy Forms

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

Section 3204(d) of the New York Insurance Law states:

"No insertion in or other alterations of any written application for any such policy or contract shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer for administrative purposes only in such manner as to indicate clearly that the insertions are not to be ascribed to the applicant."

The examiner reviewed 38 standard and substandard issued term life policies. In 26 instances, the Company made alterations to the applications and delivered application amendments to applicants because of changes in the premium rate or face amount on the applications. In three (11.5%) of the 26 instances, the Company issued term life policies without first obtaining the applicant's written consent for the premium rate or face amount alterations made to the applications.

The Company violated Section 3204(d) of the New York Insurance Law when the Company failed to obtain written consent from the applicants when alterations were made to the applications after the issuance of term life policies.

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 4223(k)(1) of the New York Insurance Law states, in part:

“At least once in each contract year, the company shall mail to each holder of a contract subject to this section under which benefit payments have not yet commenced a statement as of a date during such year as to any paid-up annuity benefit or the amount available under each account to provide a paid-up annuity benefit, any cash surrender benefit and any death benefit, under the contract. . . .”

The examiner reviewed ten annuity contract annual statements for the years ended 2011 and 2012, five from the new business system, CAPSIL (“CAP”), and five from the Life Master File system (“LMF”). The review revealed that the Company did not include the death benefit amount on the five annuity contract annual statements for all five policies on the LMF system.

The Company violated Section 4223(k)(1) of the New York Insurance Law by failing to disclose the death benefit on the annual statements sent to certain contract holders. The Company did however initiate corrective actions once notified of the error.

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

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

The review of the Company’s death benefit claim form revealed that the form did not have the required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim form. Instead, the space provided for the signature was several paragraphs below the required fraud warning statement.

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

The review of claim forms further revealed that the claim form had the “Mutual of Omaha Companion of New York,” logo printed on the forms. The Company is not identified as the insurer anywhere on these forms.

The examiner recommends that the Company be clearly identified as the insurer on the Company’s claim forms.

Section 3211 of the New York Insurance Law states, in part:

“(b) The notice required by paragraph one of subsection (a) hereof shall . . .

(2) state the amount of such payment, the date when due, the place where and the person to whom it is payable; and shall also state that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.”

The examiner’s review of a sample of 24 lapsed policies revealed that 12 (50%) life insurance premium due notices did not include the required language stating, “except as to the right to any cash surrender value or nonforfeiture benefit.”

The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating premium due notices that failed to contain the required language that the policy shall terminate or lapse “except as to the right to any cash surrender or nonforfeiture benefit”.

The examiner’s review also revealed that premium due notices were not conspicuously dated in a consistent area on all premium due notices.

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations 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 Sections 219.4(a)(1), 219.4(f) and 219.4(j) of Department Regulation No. 34-A and Sections 41.3(a) and 41.3(b) of Department Regulation No. 143 by not providing complete benefit descriptions in several marketing and advertising pieces utilized during the examination period.</p> <p>The Company corrected and subsequently discontinued the advertising pieces.</p>
B	<p>The Company violated Section 51.6(b)(4) of Department Regulation No. 60 in the cases where it failed to furnish the replaced insurer whose coverage was being replaced, with a completed Disclosure Statement and/or a copy of the sales materials used in the sale within 10 days of receipt of the application. A similar violation appeared in the prior report on examination.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 4A of this report)</p>
C	<p>The Company violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to send the applicant a revised "Disclosure Statement" when the policy was issued other than as applied for.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 4A of this report)</p>
D	<p>The Company violated Section 53-2.2(a)(5)(i) and Section 53-2.2(a)(5)(iv) of Department Regulation No. 74 by failing to provide policy summaries that included premiums and policy values for every fifth year until maturity.</p> <p>Policy summaries were corrected to include premium and policy values for every fifth year until maturity.</p>

<u>Item</u>	<u>Description</u>
E	<p>The Company violated Section 53-2.2(a)(5)(vi) of Department Regulation No. 74 by failing to disclose the interest rate assumptions used for the policy values and death benefits shown on the policy summaries.</p> <p>Policy summaries were corrected to include the interest rate assumptions used for the policy values and death benefits shown on the policy summaries.</p>
F	<p>The policy form violations revealed during the Department's post approval review of forms approved via the certification process permitted under Department Circular Letter No. 6 (2004) are as follows:</p>
F.1.a	<p>The surrender charges within some of the universal life policies issued at higher ages exceed the maximum limits set forth in Section 4221(n-1) of the New York Insurance Law.</p> <p>The Company sent a revised schedule of surrender charges to policyholders in October, 2009. New business sold after February 14, 2009 included the correctly calculated surrender charge tables within the policy data pages.</p>
F.2.a	<p>The Rider does not provide benefits that meet the definition of "life insurance" under Section 1113(a)(1) of the New York Insurance Law.</p> <p>The Company revised the Rider, which was approved by the Department on July 2, 2010.</p>
F.2.b	<p>The filing did not contain a written certification by tax counsel indicating that the Rider complies with the Internal Revenue Code, as required by Section 41.8(c) of Department Regulation No. 143.</p> <p>The Company revised the Rider, which was approved by the Department on July 2, 2010.</p>
F.2.c	<p>The Rider's definition of "Chronically III" does not meet the definition at Section 7702B(c)(2) of the Internal Revenue Code and the Rider's benefit for chronic illness does not comply with the limitations of Section 101(g)(3) of the Internal Revenue Code, as required by Section 41.1 of Department Regulation No. 143.</p> <p>The Company revised the Rider, which was approved by the Department on July 2, 2010.</p>

<u>Item</u>	<u>Description</u>
F.2.d	<p>The Rider's definition of "Chronically Ill" requires confinement to a nursing home for at least 90 consecutive days, conditioning receipt of accelerated death benefits on a nursing home stay, a violation of Section 41.8(g) of Department Regulation No. 143.</p> <p>The Company revised the Rider, which was approved by the Department on July 2, 2010.</p>
F.2.e	<p>The Rider lacks the disclosure specified in Section 41.8(t)(3) of Department Regulation No. 143, which requires the first page of the policy to display prominently, "Notice to buyer: This policy may not cover all of the costs associated with long term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."</p> <p>The Company revised the Rider, which was approved by the Department on July 2, 2010.</p>
F.2.f	<p>The Rider states that the benefit is not available if all or part of the policy's death benefit has been awarded to a former spouse as part of a divorce decree. This exclusion is not among those authorized by Section 41.8(f) of Department Regulation No.143.</p> <p>The Company revised the Rider, which was approved by the Department on July 2, 2010.</p>
F.2.g	<p>The notice specified in Section 41.4(e)(1) of Department Regulation No. 143, which states, "Receipt of accelerated death benefits may affect eligibility for public assistance programs such as medical assistance (Medicaid), Aid to Families with Dependent Children and Supplemental Security Income. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for accelerated death benefits, (policy-owners) (certificate holders) should consult with the appropriate social services agency concerning how receipt will affect the eligibility of the recipient and/or the recipient's spouse or dependents."</p> <p>The notice was revised and was subsequently approved by the Department on July 2, 2010.</p>

<u>Item</u>	<u>Description</u>
F.2.h	<p>The notice specified in Section 41.4(e)(2) of Department Regulation No. 143, which states, "Receipt of accelerated death benefits may be taxable. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for such benefits, (policyowners) (certificate holders) should seek assistance from a qualified tax advisor."</p> <p>The notice was revised and subsequently approved by the Department on July 2, 2010.</p>
F.2.i	<p>The statement specified in Section 41.4 (e)(4) of Department Regulation No. 143, which would express that no health care facility, as defined in Section 20 of the Public Health Law can require any person to accelerate payment of a death benefit as a condition of admission to such health care facility or for providing any care in such facility.</p> <p>The notice was revised and subsequently approved by the Department on July 2, 2010.</p>
F.2.j	<p>The statement specified in Section 41.4(e)(5) of Department Regulation No. 143, which would set forth the remaining death benefits, if any, available to the beneficiary.</p> <p>The notice was revised and subsequently approved by the Department on July 2, 2010.</p>
F.2.k	<p>The notice specified in Section 41.4(e)(6) of Department Regulation No. 143, which would express that the insurer is prohibited from paying accelerated death benefits to the policy owner or certificate holder for a period of 14 days from the date on which the information specified in subdivision (g) of this section is transmitted in writing to the policy owner or certificate holder.</p> <p>The notice was revised and subsequently approved by the Department on July 2, 2010.</p>
F.2.l	<p>In accordance with Section 3204(a)(1) of the New York Insurance Law, nothing can be incorporated into a policy by reference unless a copy thereof is endorsed upon or attached to the policy when issued.</p> <p>All applicable forms were included in the December 2, 2009 filing and approved by the Department on July 2, 2010.</p>

<u>Item</u>	<u>Description</u>
F.2.m	<p>The illustration specified in Section 41.4(g)(3) of Department Regulation No. 143, which would demonstrate the effect of the acceleration on the policy's face amount, specified amount, death benefit, premium payments, accumulation account, cash value, loan balance, and partial withdrawals.</p> <p>The Company revised the illustration to demonstrate the effect of the accelerated death benefit on the policy's face amount, specified amount, death benefit, premium payments, accumulation account, cash value, loan balance, and partial withdrawals. The accelerated death benefit rider illustration was provided with the December 2, 2009 filing to the Department.</p>
F.3.a	<p>The application lacks the disclosure specified in Section 41.4(c) of Department Regulation No. 143 which would indicate whether a discount or lien is associated with the acceleration and any administrative charge associated with the exercise of the benefit when (as here) there is no separate premium for the benefit.</p> <p>The form was revised and subsequently approved by the Department on July 2, 2010.</p>
F.3.b	<p>The questionnaires were not submitted for approval as required by Section 3201(b)(1) of the New York Insurance Law.</p> <p>The applicable questionnaires were filed on April 9, 2009 and approved by the Department on April 14, 2009.</p>
F.3.c	<p>The GHS was not submitted for approval as required by Section 3201(b)(1) of the New York Insurance Law</p> <p>This form was filed on December 2, 2009 and approved by the Department on July 2, 2010.</p>
F.3.d	<p>The certification on the GHS does not state that it is "to the best of applicant's knowledge and belief," as required by Circular Letter 4(V)(B)(2) (1963).</p> <p>The notice was revised and subsequently approved by the Department on July 2, 2010.</p>

<u>Item</u>	<u>Description</u>
F.3.e	<p>The certification on the GHS states that incorrect or misleading information would void the policy. Section 3105(b) of the New York Insurance Law provides that the policy could only be avoided if the misrepresentation was material and Section 3203(a)(3) of the New York Insurance Law provides that the policy shall be incontestable after being in force during the life of the insured for a period of two years from its date of issue.</p> <p>The notice was revised and subsequently approved by the Department on July 2, 2010.</p>
F.3.f	<p>The Conditional Receipt was not submitted for approval as required by Section 3201(b)(1) of the New York Insurance Law.</p> <p>The notice was revised and subsequently approved by the Department on July 2, 2010.</p>
F.3.g	<p>The Fair Credit Reporting Act Notice was not submitted for approval as required by Section 3201(b)(1) of the New York Insurance Law.</p> <p>The notice was filed and subsequently approved by the Department on July 2, 2010.</p>
F.3.h	<p>The Medical Information Bureau Notice was not submitted for approval as required by Section 3201(b)(1) of the New York Insurance Law.</p> <p>The notice was filed and subsequently approved by the Department on July 2, 2010.</p>
G	<p>The Company violated Section 4223(k)(1) of the New York Insurance Law by failing to disclose the death benefit on the annual statement sent to the policyholder.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 4C of this report)</p>

6. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 51.7(b) of Department Regulation No. 60 by failing to comply with the orderly working of this Regulation in accomplishing its intended purpose in the protection of policyholders and contract holders when they did not conform to the proper sequence of events.	5
B	The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced, with a completed Disclosure Statement and a copy of any proposal, including the sales materials used in the sale of the proposed life insurance policy or annuity contract, within ten days of receipt of the application. A similar violation appeared in the prior report on examination.	5
C	The Company violated Section 51.6(b)(7) of Department Regulation No. 60, in cases where the required forms did not meet the requirements of the Regulation or were not accurate and the Company failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason for such rejection.	7
D	The Company violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to send the applicant a revised "Disclosure Statement" when the policy was issued other than as applied for. A similar violation appeared in the prior report.	7
E	The Company violated Section 3204(d) of the New York Insurance Law when the Company failed to obtain written consent from the applicants when alterations were made to the applications after the issuance of term life policies.	7
F	The Company violated Section 4223(k)(1) of the New York Insurance Law by failing to disclose the death benefit on the annual statement sent to certain contract holders.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The Company violated Section 86.4(d) of Department Regulation No. 95 by not placing the fraud warning statement immediately above the space provided for signature of the person executing the claim.	8
H	The examiner recommends that the Company be clearly identified as the insurer on the Company's claim forms.	9
I	The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating premium due notices that failed to contain the required language that the policy shall terminate or lapse "except as to the right to any cash surrender or nonforfeiture benefit".	9
J	The examiner recommends that the premium due notices be conspicuously dated in a consistent area on all premium due notices.	9

Respectfully submitted,

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.

Ijeoma Ndika

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31006

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:

IJEOMA NDIKA

as a proper person to examine the affairs of the

COMPANION LIFE INSURANCE COMPANY

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

COMPANY


with such other information as she 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 28th day of May, 2013

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:


MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

