

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

CONDITION:

DECEMBER 31, 2009

DATE OF REPORT:

DECEMBER 10, 2010

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EXAMINER:

HENRY WONG

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Executive summary	2
2. Scope of examination	3
3. Description of Company	4
A. History	4
B. Holding company	4
C. Management	11
D. Territory and plan of operation	13
E. Reinsurance	14
4. Significant operating results	15
5. Financial statements	18
A. Independent accountants	18
B. Net admitted assets	18
C. Liabilities, capital and surplus	19
D. Condensed summary of operations	20
E. Capital and surplus account	22
6. Market conduct activities	23
A. Advertising and sales activities	23
B. Underwriting and policy forms	27
C. Treatment of policyholders	29
7. Cash and short term investments	30
8. Prior report summary and conclusions	31
9. Summary and conclusions	33



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

January 26, 2017

Honorable Maria T. Vullo
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 30465, dated January 7, 2010, and annexed hereto, an examination has been made into the condition and affairs of Empire Fidelity Investments Life Insurance Company, hereinafter referred to as “the Company” or (“EFILI”) at its home office located at 200 Liberty Street, One World Financial Center, New York, NY 10281.

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

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

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

1. EXECUTIVE SUMMARY

The violations contained in this report are summarized below:

- The Company violated various sections of Department Regulation No. 60. (See item 6A of this report)
- The Company violated Section 91.4(a) of Department Regulation No. 33 by failing to maintain records with sufficient detail to show fully the system actually used for the allocation of expenses and the actual bases of the allocation under its service agreement with FMR LLC (“FMR”). (See item 3B of this report)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not filed with and approved by the Superintendent. (See item 6B of this report)
- The Company violated Section 2611(a) of the New York Insurance Law by requiring individuals proposed for insurance coverage to be the subject of an HIV related test prior to receiving a compliant written informed consent form from such individuals. (See item 6B 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, 2009. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2009, 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, 2009, to determine whether the Company's 2009 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 8 of this report.

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

3. DESCRIPTION OF COMPANY

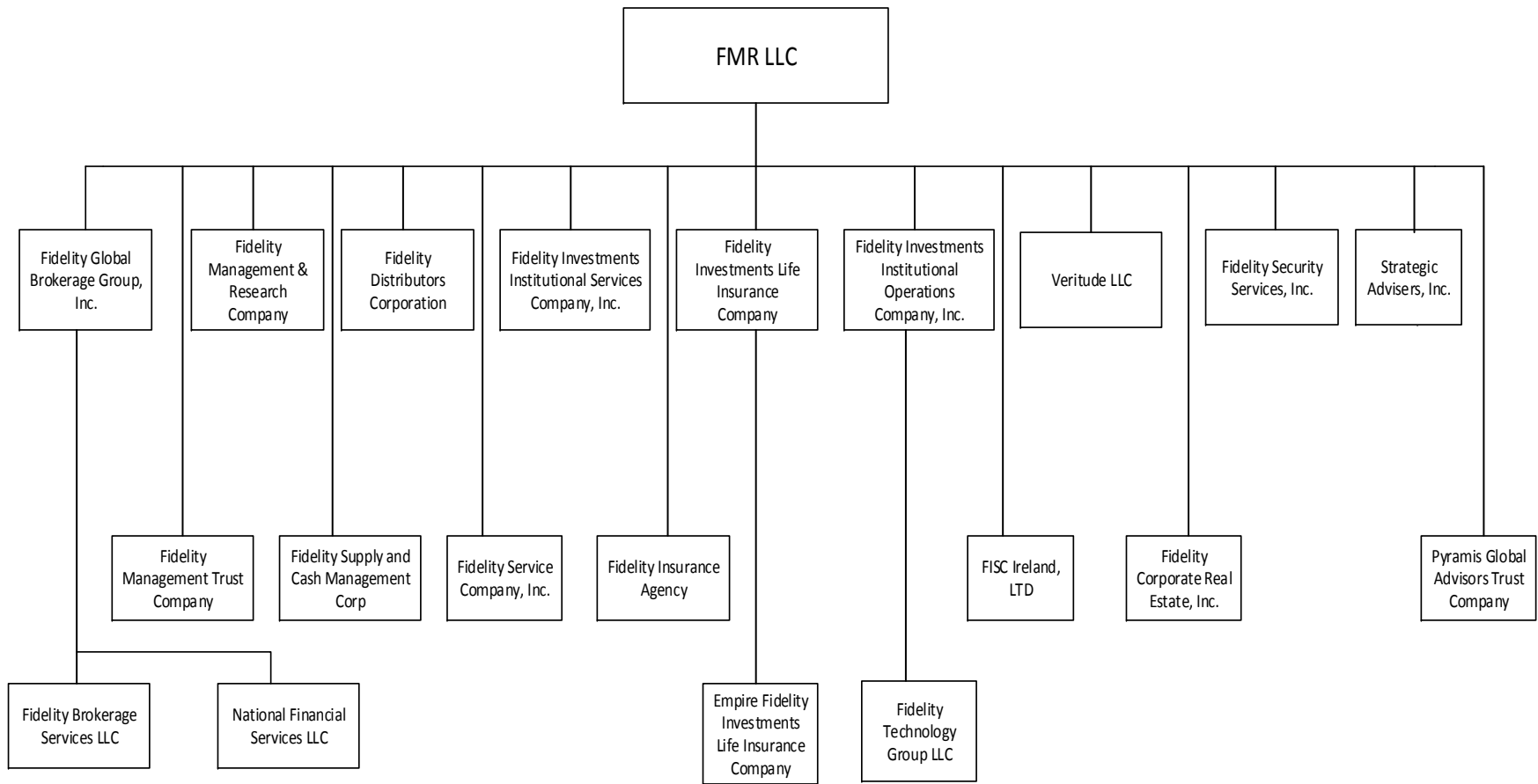
A. History

The Company was incorporated as a stock life insurance company under the laws of New York on May 1, 1991, and was licensed and commenced business on June 1, 1992. Initial resources of \$7,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$5,000,000, were provided through the sale of 200,000 shares of common stock (with a par value of \$10 each) for \$35 per share. As of December 31, 2009, the Company's capital and paid in and contributed surplus were \$2,000,000 and \$13,500,000, respectively.

B. Holding Company

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

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2009, follows:



The Company had 10 service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Distribution Agreement 17390	10/01/1991	Fidelity Brokerage Services, Inc. ("FBSI") renamed Fidelity Brokerage Services, LLC ("FBS") on 8/28/2000, and Fidelity Insurance Agency ("FIA")	The Company	FBSI appointed as principal underwriter; FIA as general agent for sale of variable life insurance policies and variable annuity contracts	2007 \$(7,551,509) 2008 \$(6,155,186) 2009 \$(4,180,172)
Administrative Services Agreement 24085 Amendment 1 Amendment 2 Amendment 3	03/10/1992 01/01/1993 10/21/1996 10/12/2001	Fidelity Investments Life Insurance Company	The Company	Various administrative services and use of facilities	2007 \$(3,094,320) 2008 \$(3,479,222) 2009 \$(3,347,789)
Participation agreements 17390*** Fund I and II Fund II amendment Fund III Fund IV Fund V (amendment to Fund I and II) Fund III, IV, V amendment	 10/01/1991 12/15/1994 01/27/1997 06/26/2001 05/16/2007 05/08/2009	Variable Insurance Products Funds I, II, III, IV and V; Fidelity Distributors Corporation ("FDC")	The Company	The Company participates in the VIP Funds - purchasing and redeeming shares for its variable annuity and variable life contracts	2007 \$0 2008 \$0 2009 \$0 .

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Administrative Service Agreement 32457	08/01/2004	FMR (including various subsidiaries)	The Company	Administrative services	2007 \$(806,864) 2008 \$(542,964) 2009 \$(666,687)
Amendment 1	04/01/2005				
Amendment 2	05/19/2006				
Amendment 3	08/31/2008				
Selling Agreement 26299	02/01/1999	FBS, FIA Fidelity Investments Institutional Services Company ("FIIS")	The Company	FIIS is appointed and authorized to sell EFILI's annuity contracts	2007 \$0 2008 \$0 2009 \$0
Distribution Agreement 24084	09/15/1996	FIA	The Company	FIA appointed EFILI's independent general agent for sales of EFILI's annuity and life policies, other than variable life and variable annuity	2007 \$(590,806) 2008 \$(195,332) 2009 \$(9,191)
Amendment	04/15/2002				
Service Contract	10/01/2005	The Company	FDC	Variable product fund transfer agent services.	2007 \$ 914,212 2008 \$1,400,447 2009 \$1,535,792
Amendment 1	01/31/2006				
Amendment 2	09/04/2007				
Sublease Agreement 33483**	04/01/2005	NFS	The Company	Lease of office space	2007 \$ 0 2008 \$(61,698) 2009 \$(16,095)

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
Separate Account Services Agreement 43805	08/15/2005	The Company	Fidelity Investments Institutional Operations Company, Inc. ("FIIOC")	Variable product fund administrative services.	2007 \$ 432,847 2008 \$ 597,852 2009 \$ 699,105
Investment Management Agreement 24845	07/11/1997	Fidelity Management Trust Company	The Company	Investment advice and management	2007 \$(211,747) 2008 \$(196,580) 2009 \$(196,446)

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

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

*** There were no service charges for this agreement, only fund participation.

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

1. Section 1505(d) of the New York Insurance Law states, in part:

“The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period: . . .

(3) rendering of services on a regular or systematic basis . . .”

The review of the Company’s service agreements with affiliates revealed that the Company entered into several participation agreements with FDC for various VIP Funds (Funds I, II, III, IV, and V). The participation agreements with various VIP Funds (Funds I, II, III, IV, and V) were last amended on May 8, 2009, but the company did not file the agreements with the Superintendent prior to use. The following are the participation agreements and amendments that were not filed with the Superintendent prior to use:

- (1) VIP Fund I, effective October 1, 1991
- (2) Amendment to VIP Fund II, effective January 27, 1994
- (3) VIP Fund III, effective January 27, 1997
- (4) VIP Fund IV, effective June 26, 2001
- (5) VIP Fund V (effective date is missing in the agreement).
- (6) Amended and Restated Participation Agreement to VIP Fund I, II, III, IV, and V, effective May 8, 2009.

The examiner recommends that the Company file the amended and restated participation agreement to VIP Funds I, II, III, IV, and V that became effective May 8, 2009, and any subsequent amendments thereto, with the Superintendent for review.

2. The Company entered into a selling agreement with FBS, FIA and FIIS in February 1999. However, no transactions took place under this agreement. The Company should consider withdrawing this agreement since there were no activities for a long period of time.

The examiner recommends that the Company withdraw the selling agreement since no services have been provided under such agreement.

3. Section 91.4(a) of Department Regulation No. 33 states, in part:
- “ . . . (2) Each life insurer shall maintain records with sufficient detail to show fully:
- (i) the system actually used for allocation of income and expenses;
 - (ii) the actual bases of allocation;
 - (iii) the actual monetary distribution of the respective items of income, salaries, wages, expenses, and taxes to: . . .
 - (d) companies . . .
- (3) Such records shall be classified and indexed in such form as to permit ready identification between the item allocated and the basis upon which it was allocated, and shall be maintained in such a manner as to be readily accessible for examination . . .
- (5) Allocations of income and expenses between companies shall be treated in the same manner as if made for major annual statement lines of business.”

The examiner requested documentation supporting the expenses charged and the bases of allocation for the Company’s service agreement with FMR. The documentation supporting the method of allocation used and the resulting charges and fees allocated under the Company’s service agreement with FMR indicated that the Company utilized a number of percentages to calculate the expense. However, the Company could not explain how these expense allocation percentages were determined.

The Company violated Section 91.4(a) of Department Regulation No. 33 by failing to maintain records with sufficient detail to show fully the system actually used for the allocation of expenses, and the actual bases of the allocation under its service agreement with FMR.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine members. Directors are elected for a period of one year at the annual meeting of the stockholders held in April of each year. As of December 31, 2009, the board of directors consisted of 11 members. Meetings of the board are held quarterly.

The 11 board members and their principal business affiliation, as of December 31, 2009, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Alan J. Brandon Holmdel, NJ	Consultant Empire Fidelity Investments Life Insurance Company	1998
William R. Ebsworth Weston, MA	Chief Investment Officer Strategic Advisers, Inc.	2008
Kathleen M. Graveline* Needham, MA	Retired John Hancock Financial Services, Inc.	2007
Peter G. Johannsen* Wellesley, MA	Partner Sullivan & Worcester LLP	1991
Malcolm MacKay* New York, NY	Managing Director Russell Reynolds Associates, Inc.	1991
Kathleen A. Murphy Glastonbury, CN	President Fidelity Personal Investing	2009
Rodney R. Rohda Waban, MA	Retired Fidelity Investments Life Insurance Company	1991
Roger T. Servison Brookline, MA	President Strategic New Business Development FMR Corporation	2005
Jon J. Skillman Weston, MA	President Empire Fidelity Investments Life Insurance Company	2005
George M. Slovak Amherst, NH	Executive Vice President Fidelity Personal Investing	2009

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Floyd L. Smith* New York, NY	Retired MONY Life Insurance Company	1993

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

Jeffrey K. Cimini was elected as a director in February 2010.

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, 2009:

<u>Name</u>	<u>Title</u>
Jon J. Skillman	President
William J. Johnson Jr.	Executive Vice President and Actuary
Edward M. Shea	Secretary
Miles Mei	Treasurer
Jeffrey K. Cimini	Executive Vice President, Sales
David A. Golino	Chief Financial Officer
Paul J. Vancheri	Senior Vice President, Systems & Technology
Joan M. Bloom	Senior Vice President, Marketing
Robert J. Cummings	Senior Vice President, Client Services
Brian N. Leary*	Chief Compliance Officer

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

Jon J. Skillman resigned as President in February 2010, and was replaced by Jeffrey K. Cimini.

D. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business only in New York. In 2009, 100% of life premiums, annuity considerations and deposit type funds were received from New York. Policies are written on a non-participating basis. The principal line of business sold during the period under examination was individual annuities. The Company issued deferred and immediate variable annuity products as well as traditional term life policies.

The Company discontinued or closed two of the deferred variable annuity products during the examination period. The Growth and Guaranteed Income Annuity product was started in September 2007, but discontinued after March 31, 2009. This product has been reintroduced as a partnership with MetLife, written on MetLife paper. The Retirement Reserves product "NRR" is closed to new customers.

The Company also closed two of the immediate annuity products, Income Advantage and Guaranteed Income Annuity in April of 2008.

In addition, the Company discontinued offering a 5 year term insurance product due to low customer demand in February 2008. The Company also discontinued offering their variable universal life insurance product during 2008.

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

E. Reinsurance

As of December 31, 2009, the Company had reinsurance treaties in effect with eight companies, of which seven were authorized or accredited. The Company's life business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and/or facultative basis.

The maximum retention limit for individual life contracts is \$100,000. The total face amount of life insurance ceded as of December 31, 2009, was \$866,636,000, which represents 84% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$4,285,211, was supported by letters of credit.

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

4. SIGNIFICANT OPERATING RESULTS

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

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

	December 31, <u>2006</u>	December 31, <u>2009</u>	<u>Increase</u>
Admitted assets	<u>\$1,353,080,565</u>	<u>\$1,451,050,444</u>	<u>\$97,969,879</u>
Liabilities	<u>\$1,303,779,340</u>	<u>\$1,396,589,533</u>	<u>\$92,810,193</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	13,500,000	13,500,000	0
Unassigned funds (surplus)	<u>33,801,225</u>	<u>38,960,910</u>	<u>5,159,685</u>
Total capital and surplus	<u>\$ 49,301,225</u>	<u>\$ 54,460,910</u>	<u>\$ 5,159,685</u>
Total liabilities, capital and surplus	<u>\$1,353,080,565</u>	<u>\$1,451,050,443</u>	<u>\$97,969,878</u>

The majority (94.9%) of the Company's admitted assets, as of December 31, 2009, was derived from separate accounts.

The Company's invested assets as of December 31, 2009, exclusive of separate accounts, were mainly comprised of bonds (87.1%) and cash and short-term investments (12.9%).

The following indicates, for each of the years listed below, the amount of life insurance issued and in force by type (in thousands of dollars):

<u>Year</u>	<u>Individual Whole Life</u>		<u>Individual Term</u>	
	<u>Issued</u>	<u>In Force</u>	<u>Issued</u>	<u>In Force</u>
2007	\$4,980	\$10,680	\$85,824	\$ 944,794
2008	\$6,200	\$16,880	\$82,800	\$ 994,019
2009	\$ 0	\$16,608	\$65,200	\$1,003,018

The significant decrease in individual whole life insurance issued from 2008 to 2009 was due to the fact that the Company discontinued offering individual whole life policies since 2008.

The significant decrease in individual term life insurance issued from 2008 to 2009 was due to the fact that the Company discontinued offering the 5 year term insurance product.

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>2007</u>	<u>2008</u>	<u>2009</u>
Outstanding, end of previous year	13,016	13,935	14,378
Issued during the year	1,690	1,306	697
Other net changes during the year	<u>(771)</u>	<u>(863)</u>	<u>(1,070)</u>
Outstanding, end of current year	<u>13,935</u>	<u>14,378</u>	<u>14,005</u>

The significant decrease in annuities issued during the examination period was primarily driven by a decline in Personal Retirement Annuity contracts issued. This was due to the decline of the equity markets, whereby customers fled the equity markets and sought the protection of fixed rate products instead.

The significant increase in “other net changes during the year” was primarily comprised of contract terminations due to surrendered contracts as a result of unfavorable markets during the examination period.

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>2007</u>	<u>2008</u>	<u>2009</u>
Ordinary:			
Life insurance	\$ 210,715	\$ (49,450)	\$ 24,096
Individual annuities	<u>2,756,782</u>	<u>789,122</u>	<u>1,742,057</u>
Total	<u>\$2,967,497</u>	<u>\$739,672</u>	<u>\$1,766,153</u>

The significant decrease in life insurance net gain from operations from 2007 to 2008 was due to lower revenues from commission and expense allowances earned from reinsurance ceded. The increase in life insurance net gain from operations from 2008 to 2009 was due to lower benefit payments and lower general expenses offset by slightly lower commission and expense allowance revenues.

The significant decrease in individual annuities net gain from 2007 to 2008 was due to lower asset based fee revenue and investment income. The increase in net gain in 2009 over 2008 was driven by lower asset based fee revenue offset by lower commission expenses.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2009, as contained in the Company's 2009 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, 2009 filed annual statement.

A. Independent Accountants

The firm of PricewaterhouseCoopers LLP was retained by the Company to audit the Company's combined statutory basis statements of financial position of the Company 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.

PricewaterhouseCoopers 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	\$ 61,892,803
Cash, cash equivalents and short term investments	9,183,454
Contract loans	5,260
Investment income due and accrued	644,764
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	48,979
Deferred premiums, agents' balances and installments booked but deferred and not yet due	83,125
Reinsurance:	
Amounts recoverable from reinsurers	155,297
Other amounts receivable under reinsurance contracts	11,638
Net deferred tax asset	711,387
Fund administration fee receivable	55,453
State income tax recoverable	153,052
Recording keeping fee receivable	636,339
From separate accounts, segregated accounts and protected cell Accounts	<u>1,377,468,893</u>
Total admitted assets	<u>\$1,451,050,444</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 21,994,620
Contract claims:	
Life	86,422
Premiums and annuity considerations for life and accident and health contracts received in advance	2,625
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	263,130
Interest maintenance reserve	639,038
Commissions to agents due or accrued	406,296
General expenses due or accrued	421,000
Transfers to Separate Accounts due or accrued	(2,952,750)
Taxes, licenses and fees due or accrued, excluding federal income taxes	10,228
Current federal and foreign income taxes	102,145
Amounts withheld or retained by company as agent or trustee	134,617
Remittances and items not allocated	731,917
Miscellaneous liabilities:	
Asset valuation reserve	46,937
Payable to parent, subsidiaries and affiliates	750,355
Payable for securities	6,057
From Separate Accounts statement	<u>1,373,946,896</u>
 Total liabilities	 <u>\$1,396,589,533</u>
 Common capital stock	 \$ 2,000,000
 Gross paid in and contributed surplus	 \$ 13,500,000
Unassigned funds (surplus)	<u>38,960,910</u>
 Total surplus	 <u>\$ 52,460,910</u>
 Total capital and surplus	 <u>\$ 54,460,910</u>
 Total liabilities, capital and surplus	 <u>\$1,451,050,443</u>

D. Condensed Summary of Operations

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Premiums and considerations	\$241,743,022	\$204,099,419	\$138,852,839
Investment income	2,923,282	2,049,055	1,509,319
Net gain from operations from Separate Accounts	638,296	(1,110,913)	699,751
Commissions and reserve adjustments on reinsurance ceded	2,013,917	1,019,977	701,506
Miscellaneous income	<u>11,482,903</u>	<u>11,484,740</u>	<u>10,235,300</u>
 Total income	 <u>\$258,801,420</u>	 <u>\$217,542,278</u>	 <u>\$151,998,715</u>
 Benefit payments	 \$122,256,808	 \$128,929,502	 \$146,716,099
Increase in reserves	(5,975,492)	(993,857)	1,253,047
Commissions	8,116,462	6,404,487	4,186,962
General expenses and taxes	3,867,475	4,793,757	5,451,163
Increase in loading on deferred and uncollected premium	(19,883)	6,518	(11,854)
Net transfers to (from) Separate Accounts	<u>126,185,190</u>	<u>77,711,448</u>	<u>(8,540,706)</u>
 Total deductions	 <u>\$254,430,560</u>	 <u>\$216,851,855</u>	 <u>\$149,054,711</u>
 Net gain (loss)	 \$ 4,370,860	 \$ 690,423	 \$ 2,944,004
Federal and foreign income taxes incurred	<u>1,403,361</u>	<u>(49,249)</u>	<u>1,177,854</u>
 Net gain (loss) from operations before net realized capital gains	 \$ 2,967,499	 \$ 739,672	 \$ 1,766,150
Net realized capital gains (losses)	<u>(180,449)</u>	<u>(475,016)</u>	<u>90,584</u>
 Net income	 <u>\$ 2,787,050</u>	 <u>\$ 264,656</u>	 <u>\$ 1,856,734</u>

The steady decrease in premiums and considerations during the examination period was due to a decrease in personal retirement annuity premiums in 2008, and the discontinuation of the growth and guarantee income annuity in March 2009 because of reinsurance capacity constraints.

The significant decrease in investment income during the examination period was due to repositioning of the Company's portfolio during the third and fourth quarter of 2008 to U.S. Treasury notes and money market funds, and lower yields earned on the portfolio coupled with higher average asset balances in money market funds during 2009.

The significant decrease in “commissions and reserve adjustment on reinsurance ceded” during the examination period was due to lower expense allowances relating to reinsurance for the FIA and GIA products, as the Company discontinued offering these products after April, 2008.

The significant increase in “increase in reserves” from 2007 to 2008 was primarily due to lower net contract holder outflows from the guaranteed fixed account of the retirement reserves product (“NRR”) in 2008. The guaranteed fixed account reserves for NRR decreased by \$2.4 million in 2008 compared to \$6.5 million in 2007 due to lower fund exchanges out of the guaranteed fixed account as investors sought fixed rate protection due to the volatility in the equity markets. In addition, the Company increased its reserves for the guaranteed minimum death benefit (“GMDB”), after reinsurance, by \$1.1 million in 2008 compared to a \$0.2 million decrease in these reserves in 2007, resulting in a year over year increase of \$1.3 million. In 2008, higher reserve requirements were required to support the GMDB death benefit guarantee with lower underlying account values that resulted from the negative market returns for the year.

The significant fluctuation in “net gain (loss)” during 2008 as compared to 2007 and 2009 was due to the lower separate account asset based fee revenues as well as the lower demand for variable annuity products. In addition, the poor financial markets had a negative impact on yields for fixed income securities, which continued to depress investment earnings in 2009.

E. Capital and Surplus Account

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Capital and surplus, December 31, prior year	\$ <u>49,301,225</u>	\$ <u>51,161,101</u>	\$ <u>52,055,908</u>
Net income	\$ 2,787,050	\$ 264,656	\$ 1,856,734
Change in net deferred income tax	1,280,349	231,676	331,571
Change in non-admitted assets and related items	(1,949,741)	115,051	242,726
Change in liability for reinsurance in unauthorized companies	0	(18,873)	18,873
Change in asset valuation reserve	53,778	302,297	(44,902)
Cumulative effect of changes in accounting Principles	<u>(311,560)</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus for the year	\$ <u>1,859,876</u>	\$ <u>894,807</u>	\$ <u>2,405,002</u>
Capital and surplus, December 31, current year	\$ <u>51,161,101</u>	\$ <u>52,055,908</u>	\$ <u>54,460,910</u>

The significant fluctuation in “change in non-admitted assets and related items” during 2008 as compared to 2007 and 2009 was due to increase in the non-admitted portion of the deferred tax asset and an increase in electronic data processing equipment in 2007.

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.

1. Section 4228(f)(1) of the New York Insurance Law states, in part:

“Filing requirements for agent compensation plans are as follows:

(A) A company shall make annual information filings with respect to any newly-introduced plans or changes under which the company makes payments to agents if such plans are commission plans for which the commission percentages are, in all policy or contract years, no greater than the commission percentages set forth in paragraphs one, two, three and four of subsection (d) of this section . . .”

A review of the Company's compensation plans indicated that the Company did not file any compensation plans for its term life policy form EFTL-99200 and annuity contract form EFVIA-99100, which were approved by the Department in April 2001 and October 2000 respectfully.

The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by failing to file its term life policy and annuity contract compensation plans with the Department.

2. 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 contract shall: . . .

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the “Disclosure Statement”, and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part;

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

(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."

The examiner selected a sample of 46 life replacements out of a population of 71, and 60 annuity replacements out of a population of 2,187 for review. The examiner also reviewed 54 GGI contracts, which was the only type of annuity contract where the Company imposed a surrender charge. The replacements were reviewed for compliance with Department Regulation No. 60. The examiner noted the following deviations from Department Regulation No. 60.

I. In 35 out of 46 (76.1%) life replacement transactions reviewed, a comparison of the application, the Disclosure Statement, and the policy issued revealed that the amount of insurance, premium charge or coverage period issued was different than what was applied for. The Company did not prepare and present the applicant with a revised Disclosure Statement consistent with the policy issued.

The Company violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to provide a revised Disclosure Statement to the applicant when the policy was issued other than as applied for.

II. In 42 out of 46 (91%) life replacement transactions reviewed, the Company incorrectly wrote "N/A" for the Contestable Expiry Date applying to the proposed term policies in the Description of Transaction section of the Disclosure Statement when the proposed term policy had a two year contestable period.

Appendix 10A and Appendix 10B of Department Regulation No. 60 require that a composite comparison shall be completed for all existing life insurance life insurance policies or annuity contracts to all proposed life insurance policies or annuity contracts when more than one policy or annuity contract is affected by the transaction.

In the one life replacement policy involving two or more contracts being replaced, a composite comparison was not completed as part of the Disclosure Statement.

In all eight annuity replacement transactions reviewed involving two or more contracts being replaced, a composite comparison was not completed as part of the Disclosure Statement.

In 26 out of 46 (56%) life replacement transactions reviewed and in eight out of 60 (13%) non-GGI annuity replacement transactions reviewed, the agent indicated “none” with regard to “the advantages of continuing the existing life insurance policy or annuity contract without changes” in the Agent’s Statement section of the Disclosure Statement.

In each case a more appropriate response existed. In the case of the life replacements for example, the contestable period for the existing policy had expired. In the case of the replaced annuity contracts for example, the existing annuity contract was a fixed contract with a guaranteed fixed minimum interest rate.

In 10 out of 46 (22%) life replacement transactions reviewed, the Disclosure Statement failed to indicate whether sales material was used in the sale of the proposed policy or contract.

In 22 out of 60 (37%) non-GGI annuity replacement transactions reviewed, the sales material checklist indicated that sales materials were used, but the Agent’s Statement section of the Disclosure Statement indicated that either “No proposal or sales material was used in the sale” or the sales material check box was not checked.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that the Disclosure Statement used in the sale of the proposed Company policy or annuity contract was accurate and met the requirements of the Insurance Law and Department Regulation No. 60.

III. In six out of 46 (13%) life replacement transactions reviewed, the Definition of Replacement form did not have the agent’s and/or applicant’s signatures.

In five out of 60 (8%) non-GGI annuity replacement transactions reviewed, the Important Notice and/or Disclosure Statement were signed after the application, and the Company did not reject the application.

The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application where the required forms were not received with the application or the forms did not meet the requirements of Department Regulation No. 60.

IV. In five out of 46 (11%) life replacement transactions reviewed, the Company failed to furnish the insurer whose coverage was being replaced with a copy of the sales material used in the sale of the proposed life insurance policy, and the completed Disclosure Statement within ten days of receipt of the application. The Company furnished the sales material and disclosure statement to the replaced company between 13 to 84 days after receipt of the application.

In all 47 external annuity replacement transactions reviewed, the file did not contain evidence that the sales material was sent to the replaced company.

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 copy of the sales material used in the sale of the proposed life insurance policy or annuity contract within ten days of receipt of the application.

The examiner recommends that the Company implement a remediation plan, acceptable to the Department, to mitigate the deficiencies noted above and provide relief to all policy and contract holders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts.

The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee.

B. Underwriting and Policy Forms

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

1. Section 2611 of the 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.

(b) Written informed consent to an HIV related test shall consist of a written authorization that is dated and includes at least the following: . . .

(4) a statement that the individual may identify on the authorization form the person to whom the specific test results may be disclosed in the event of an adverse underwriting decision, which person may be the individual or a physician or other designee at the discretion of the individual proposed for insurance . . .”

In 30 out of 115 (26%) life underwriting files reviewed, the examiner noted that the consent forms signed by applicants prior to taking HIV-related tests were not New York compliant consent forms.

The Company violated Section 2611(b)(4) of the New York Insurance Law by collecting the prior consent of individuals on forms that did not include a space for the name of a person to whom the test could be disclosed in the event of an adverse underwriting decision.

2. Section 3209(b)(1) of the New York Insurance Law states, in part:

“No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date, as set forth in subsection (n) of this section, unless the prospective purchaser has been provided with the following:

(A) a copy of the most recent buyer's guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken . . .”

Section 3209(d) of the New York Insurance Law states, in part:

“The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(6) for the life insurance policies described in paragraph one of subsection (n) of this section, life insurance cost indexes . . . for the basic policy for ten and twenty years, but in no case beyond the premium-paying period;

(7) in addition the applicant should be advised that, when the policy is issued, a complete policy summary, including cost data, based on the benefits, premiums and dividends of the policy as issued, will be furnished; and that, following the receipt

of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid . . . ”

The Company issued 255 term life policies in New York during the examination period. The examiner reviewed a sample of 80 term life underwriting files. In all instances the preliminary information provided to the applicant failed to contain information regarding the cost indexes of the policy or a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid.

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective applicants with preliminary information that conformed to Section 3209(d) of the New York Insurance Law on or before the date that the application was taken.

The examiner recommends that the Company amend its preliminary information documents to include the life insurance cost indexes and the equivalent level annual dividend, if applicable, for the basic policy required by Section 3209(d)(6) of the New York Insurance Law and the language required by Section 3209(d)(7) of the New York Insurance Law indicating that a STATEMENT OF POLICY COST AND BENEFIT INFORMATION will be furnished upon delivery of the policy and further that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premium paid.

3. Section 3201(b)(1) of the New York Insurance Law states, in part:

“No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent . . . ”

The examiner’s review of Variable Universal Life, Term Life and Fixed Annuity underwriting files revealed that the Company used the following policy forms which were not filed with and approved by the Superintendent:

- a. Term life: COFI/NY1/01- Statement of Health Form
- b. Variable Universal Life: S/VUL/TM-COI-03- Certificate of Insurability Form

The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not filed with and approved by the Superintendent. A similar violation was included 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 403(d) of the New York Insurance Law states, in part:

“All applications . . . and all claim forms . . . 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.’ ”

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

“Location of warning statements and type size. The warning statements required by subdivisions (a), (b) and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form . . .”

The examiner reviewed 23 of the 327 annuity death claims processed during the examination period. The examiner also reviewed all three life policy death claims processed during the examination period.

In 22 out of 23 (96%) annuity death claims and all three life insurance claims reviewed, the fraud warning statement was a separate attachment to the claim form and the fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form.

The Company violated Section 86.4(d) of Department Regulation No. 95 by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form.

7. CASH AND SHORT TERM INVESTMENTS

The examiner requested the Company to provide its bank reconciliations for the examination period. Based upon the review, the Company performed ledger account reconciliations rather than individual bank account reconciliations. Some ledger reconciliations contained several different bank accounts. The examiner requested that the Company perform the reconciliations for each bank account. During the review of the provided individual bank account reconciliations, the examiner determined that the amounts reported on Schedule E (Cash) and Schedule DA (Short-Term Investments) of the 2009 annual statement were incorrect. Schedule E was overstated by \$1,807,396 and Schedule DA was understated by \$1,807,395. The discrepancy was due to the fact that the Company incorrectly applied the reconciliation items to the Schedule E instead of Schedule DA. It should be noted that the total amount of assets do not change due to the error.

The examiner recommends that the Company perform timely periodic reconciliations for each bank account with adequate supporting details.

The examiner recommends that the Company correctly report the amounts on Schedule E and Schedule DA of all future filed annual statements.

8. 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 examiner recommended that the Company withdraw Administrative Services Agreement, file number 21675, between the Company and FISCO because the services were no longer being provided.</p> <p>The Company withdrew the agreement in November, 2010.</p>
B	<p>The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to notify the Superintendent in writing of its intention to enter into agreements with affiliates for the rendering of services on a regular or systematic basis at least thirty days prior to rendering such services.</p> <p>The Company filed the service agreements with FIIOC and FDC with the Superintendent in November, 2010.</p>
C	<p>The examiner recommended that the Company file the service agreements with the Superintendent to cover the services provided to FIIOC and FDC.</p> <p>The Company filed the service agreements with FIIOC and FDC with the Superintendent in November, 2010.</p>
D	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by using an application form that was not filed with or approved by the Superintendent.</p> <p>The Company used policy forms that were not filed with and approved by the superintendent during the current examination period.</p>
E	<p>The examiner recommended that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control. To the extent that audits performed by an affiliate on a functional basis are intended to encompass the activities of the Company, it should be clear from the audit workpapers that Company transactions or activities are specifically included in the samples reviewed by internal audit.</p>

<u>Item</u>	<u>Description</u>
	FMR, Inc. maintains an independent, adequately resourced, and competently staffed internal audit function and conducts examinations of FILI, which operations and processing functions are shared with EFILI. However the examiner did not see instances where EFILI was mentioned in the scope of the audits performed by FMR's corporate audit.

9. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Company file the amended and restated participation agreement to VIP Funds I, II, III, IV, and V that became effective May 8, 2009, and any subsequent amendments thereto, with the Superintendent for review.	9
B	The examiner recommends that the Company withdraw the selling Agreement since no services have been provided under such agreement.	9
C	The Company violated Section 91.4(a) of Department Regulation No. 33 by failing to maintain records with sufficient detail to show fully the system actually used for the allocation of expenses, and the actual bases of the allocation under its service agreement with FMR.	10
D	The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by failing to file its term life policy and annuity contract compensation plans with the Department.	23
E	The Company violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to provide a revised Disclosure Statement to the applicant when the policy was issued other than as applied for.	24
F	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that the Disclosure Statement used in the sale of the proposed Company policy or annuity contract was accurate and met the requirements of the Insurance Law and Department Regulation No. 60.	25
G	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application where the required forms were not received with the application or the forms did not meet the requirements of Department Regulation No. 60.	26
H	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 copy of the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement within ten days of receipt of the application.	26

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The examiner recommends that the Company implement a remediation plan, acceptable to the Department, to mitigate the deficiencies noted above and provide relief to all policy and contract holders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts.	26
J	The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee.	26
K	The Company violated Section 2611(a) of the New York Insurance Law by requiring individuals proposed for insurance coverage to be the subject of an HIV related test prior to receiving a compliant written informed consent form from such individuals.	27
L	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective applicants with preliminary information that conformed to Section 3209(d) of the New York Insurance Law on or before the date that the application was taken.	28
M	The examiner recommends that the Company amend its preliminary information documents to include the life insurance cost indexes and the equivalent level annual dividend, if applicable, for the basic policy required by Section 3209(d)(6) of the New York Insurance Law and the language required by Section 3209(d)(7) of the New York Insurance Law indicating that a STATEMENT OF POLICY COST AND BENEFIT INFORMATION will be furnished upon delivery of the policy and further that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premium paid.	28
N	The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not filed with and approved by the Superintendent.	28
O	The Company violated Section 86.4(d) of Department Regulation No. 95 by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form.	29

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
P	The examiner recommends that the Company perform timely periodic reconciliations for each bank account with adequate supporting details.	31
Q	The examiner recommends that the Company correctly report the amounts on Schedule E and Schedule DA of all future filed annual statements.	31

Respectfully submitted,

_____/s/
Henry Wong
Senior Insurance Examiner

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

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

_____/s/
Henry Wong

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30465

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:

HENRY WONG

as a proper person to examine into the affairs of the

EMPIRE FIDELITY INVESTMENTS LIFE INSURANCE COMPANY

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

COMPANY

with such other information as he shall deem requisite.

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

this 7th day of January, 2010



JAMES J. WRYNN
Superintendent of Insurance

James J. Wrynn
Superintendent