



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

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

OCTOBER 4, 2017

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EXAMINER:

JUAN SOTO

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Superintendent

September 30, 2019

The Honorable Linda A. Lacewell
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31501, dated July 6, 2016, and annexed hereto, an examination has been made into the condition and affairs of First Symetra National Life Insurance Company of New York, hereinafter referred to as “the Company,” at its home office located at 260 Madison Avenue, New York, NY 10016.

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 violations contained in this report are summarized below.

- The Company violated Section 2112(b) of the New York Insurance Law by failing to appoint agents to represent the Company, Section 2114(a)(1) by paying commissions or other compensation to an agent who was not licensed in New York and appointed by the Company, and Section 2112(d) by failing to file a certificate of termination of appointment with the Superintendent upon the termination of five of its agents. (See item 4A-1 of this report).
- The Company violated several sections of 11 NYCRR 51 (Insurance Regulation 60) by accepting applications prior to presenting the applicant with an Important Notice and a completed Disclosure Statement; failing to reject the applications when the required forms did not meet the requirements of Regulation 60 where the required Important Notice and/or the Disclosure Statement were not provided to the applicant on or prior to the date that the application for insurance was taken; failing to examine and ascertain that the Disclosure Statement used in the sale of the proposed Company's policy was accurate and met the requirements of the New York Insurance Law and Regulation 60; failing to maintain copies of the notification of replacement (agent authorization form) to the insurer whose life insurance policy was replaced for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the Department, whichever is later; failing to provide the applicant with a revised Disclosure Statement in cases where the life insurance policy issued differed from the life insurance policy applied for; and failing to furnish the insurer whose coverage was replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract, and the completed Disclosure Statement within ten days of receipt of the application. (See items 4A-2 to 4A-5 of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2011, to December 31, 2015. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2015, 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 market conduct violations and recommendations contained in the prior 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 matters which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of the State of New York on April 23, 1987, and was licensed and commenced business on January 2, 1990. Initial resources of \$8,500,000, consisting of common (preferred) capital stock of \$2,000,000 and paid in and contributed surplus of \$6,500,000, were provided through the sale of 20,000 shares of common stock for \$425 per share. As of December 31, 2015, the Company's capital and paid in and contributed surplus were \$2,000,000 and \$60,000,000, respectively.

The Company is one of three wholly owned subsidiaries of Symetra Life Insurance Company ("Symetra Life"), an Iowa domicile life insurer. Symetra Life is a wholly owned subsidiary of Symetra Financial Corporation ("Symetra"), a Delaware corporation.

On February 1, 2016, Symetra became a wholly owned subsidiary of Sumitomo Life Insurance Company ("Sumitomo Life"), a Japanese mutual life insurer, in accordance with the terms of the Agreement and Plan of Merger, dated August 11, 2015.

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 only in New York. In 2015, 100% of life premiums, including accident and health premiums, annuity considerations, and deposit type funds, were received from New York. Policies are written on a non-participating basis.

The Company's principal lines of business are annuities, life products, and medical stop loss insurance. All of its products are marketed through financial institutions, employee benefit brokers, third-party administrators, worksite specialists and independent insurance agents. The Company uses financial institutions to distribute a significant portion of its annuity products. The Company also uses independent agents to distribute its life and annuity products. Employee benefit brokers and third-party administrators distribute most of the Company's medical stop loss products.

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

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.

1. Section 2112 of the New York Insurance Law states, in part:

“. . . (b) To appoint a producer, the appointing insurer shall file, in a format approved by the superintendent, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted. . . .

(d) Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment . . . of any insurance agent licensed in this state, . . . of the certificate of appointment, of employment, of a contract or other insurance business relationship with any insurance producer, file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause. . . .”

Section 2114 (a)(1) of the New York Insurance Law states, in part:

“No insurer shall pay any commission or other compensation to any person, firm or corporation, for any services in obtaining in this state any new contract of life insurance or any new annuity contract, except to a licensed life insurance agent of such insurer or an insurance broker . . .”

The examiner reviewed a sample of 48 agent licensing files and 48 agent termination files. In 4 of the 48 licensing files reviewed (8.3%), the agent wrote business prior to being licensed in New York or being appointed by the Company. In 5 out of the 48 agent termination files reviewed (10.4%), the Company terminated the agent and failed to file a certificate of termination of appointment with the Superintendent.

The Company violated Section 2112(b) of the New York Insurance Law by failing to appoint agents to represent the Company.

The Company violated Section 2114(a)(1) by paying commissions or other compensation to an agent who was not licensed in New York and was not appointed by the Company.

The Company violated Section 2112(d) of the New York Insurance Law by failing to file a certificate of termination of appointment with the Superintendent upon the termination of five of its agents.

2. Section 51.5(c) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur: . . .

(3) Present to the applicant, not later than at the time the applicant signs the application, the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’ and a completed ‘Disclosure Statement’ signed by the agent in the form prescribed by the Superintendent of Insurance and leave copies of such forms with the applicant for his or her records; . . .”

Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(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. . . .”

The examiner reviewed a sample of 122 life and annuity replacements comprising of 35 external single premium universal life insurance replacements, 15 internal fixed deferred annuity files, 72 external annuity files consisting of 22 single premium immediate annuities, and 50 single premium deferred annuities processed during the examination period.

For 4 of the 35 external single premium universal life replacements reviewed (11.4%), the application for insurance was signed prior to the applicant’s receipt of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts (“Important Notice”) and the completed Disclosure Statement.

The Company violated Section 51.5(c)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by accepting applications prior to presenting the applicant with an Important Notice and a completed Disclosure Statement.

The Company violated Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to reject the applications when the required forms did not meet the

requirements of Insurance Regulation 60 where the required Important Notice and/or the Disclosure Statement were not provided to the applicant on or prior to the date that the application for insurance was taken.

3. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity 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; . . .

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract; proof of receipt by the applicant of the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’; the signed and completed ‘Disclosure Statement’; and the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced indexed by agent, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later; . . .”

Section 243.2(b) of 11 NYCRR 243 (Insurance Regulation 152) states, in part:

“Except as otherwise required by law or regulation, an insurer shall maintain:

(1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. . . . A policy record shall include: . . .

(iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy. . . .”

For 2 of the 35 external single premium universal life replacements reviewed (5.7%), the Company failed to maintain the agent authorization letter sent to the replaced company, the request sent to the replaced company for information necessary to complete the Disclosure Statement, and the replaced company’s response. The replaced company’s response is necessary in order for the Company to examine and ascertain that the Disclosure Statement completed by its agent and submitted with the application was accurate. The examiner was unable to determine the accuracy of the information included in the existing insurance’s Disclosure Statement. Without a copy of the information provided by the existing insurer, it is unlikely that the Company was able to

determine the accuracy of the information presented in the Disclosure Statement for the existing policies.

The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to examine and ascertain that the Disclosure Statement used in the sale of the proposed Company's policy was accurate and met the requirements of the New York Insurance Law and Regulation 60.

The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to maintain copies of the notification of replacement (agent authorization form) to the insurer whose life insurance policy was replaced for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the Department, whichever is later.

The Company violated Section 243.2(b)(1)(iv) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain the agent authorization form and a copy of the replaced company's response supporting the information presented in the Disclosure Statement for the existing insurance as part of the policy record.

4. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(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.”

For 4 of the 35 single premium universal life replacements reviewed (8.6%), the policy was not issued as applied for and the Company failed to provide the applicant with a revised Disclosure Statement. The issued policy's face amount and annualized premium did not match the application for life insurance and the Disclosure Statement signed by the applicant and the producer. The Company did not provide the applicant with a revised Disclosure Statement when the policy or contract was issued other than applied for.

The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to provide the applicant with a revised Disclosure Statement in cases where the life insurance policy issued differed from the life insurance policy applied for.

5. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) 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;’ . . .”

For 4 of the 22 external single premium immediate annuity replacements reviewed (18.2%), the Company was unable to provide evidence that the Disclosure Statement was provided to the replaced company within ten days upon its receipt of the completed Disclosure Statement.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to furnish the insurer whose coverage was replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract, and the completed Disclosure Statement within ten days of receipt of the application. A similar violation appeared in the prior report on examination.

B. Underwriting and Policy Forms

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

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

C. Treatment of Policyholders

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

Section 403(d) of the NY Insurance Law states, in part:

“ . . . [A]ll claim forms, except as provided for in subsection (e) of this section, shall contain a notice in a form approved by the superintendent that clearly states in substance the following:

‘Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.’ ”

Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 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 various life and annuity claims processed during the examination period. The examiner’s review revealed that the Company used several claim forms during the examination period that did not have the statutorily required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim form. While the claims forms reviewed included a fraud warning statement, the wording and/or location of the fraud warning statement did not generally conform to New York standards.

The Company violated Section 403(d) of the New York Insurance Law and Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the statutorily required fraud warning statement immediately above the space provided for the signature of the person executing the claim form.

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations and recommendation 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 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when it failed to examine the Disclosure Statements of deferred annuity to immediate annuity replacements and ascertain that they were accurate and met the requirements of the Insurance Law and Insurance Regulation 60. A similar violation appeared in the prior report on examination.</p> <p>The examiner's review did not reveal any issues with deferred annuity to immediate annuity replacements.</p>
B	<p>The Company violated Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when, in the cases where the required forms did not meet the requirements of Insurance Regulation 60 or were not accurate, the Company failed to, within ten days from the date of receipt of the application, either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore. A similar violation appeared in the prior report on examination.</p> <p>The examiner's review did not reveal any issues with deferred annuity to immediate annuity replacements.</p>
C	<p>The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to provide the company whose life insurance policy or annuity contract was being replaced a copy of the Disclosure Statement within ten days of receipt of such documentation.</p> <p>This is a repeat violation. (See item 4A-5 of this report.)</p>
D	<p>The examiner recommends that the Company institute procedures which result in a tracking system that correctly identifies all actual replacements for all the Company's life insurance and annuity products.</p> <p>The Company's procedures were formally changed in November 2011 to comply with the recommendation. Reconciliation of replacement logs with system data occurs as part of the Company's self-audit program. The examiner's review did not reveal any discrepancies.</p>
E	<p>The Company violated Section 3214(c) of the New York Insurance Law by failing to pay interest from the date of death to the date of payment in the settlement of deferred annuity death claims.</p>

ItemDescription

A remediation for the affected consumers was completed on February 29, 2012. The Company's systems and procedures were also changed to ensure that the proper amount of interest is paid. The examiner's review of interest calculations during the examination period did not reveal any inaccuracies.

6. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 2112(b) of the New York Insurance Law by failing to appoint agents to represent the Company.	5
B	The Company violated Section 2114(a)(1) by paying commissions or other compensation to an agent who was not licensed in New York and was not appointed by the Company.	5
C	The Company violated Section 2112(d) of the New York Insurance Law by failing to file a certificate of termination of appointment with the Superintendent upon the termination of five of its agents.	6
D	The Company violated Section 51.5(c)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by accepting applications prior to presenting the applicant with an Important Notice and a completed Disclosure Statement.	6
E	The Company violated Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to reject the applications when the required forms did not meet the requirements of Insurance Regulation 60 where the required Important Notice and/or the Disclosure Statement were not provided to the applicant on or prior to the date that the application for insurance was taken.	6
F	The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to examine and ascertain that the Disclosure Statement used in the sale of the proposed Company's policy was accurate and met the requirements of the New York Insurance Law and Regulation 60.	8
G	The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to maintain copies of the notification of replacement (agent authorization form) to the insurer whose life insurance policy was replaced for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the Department, whichever is later.	8
H	The Company violated Section 243.2(b)(1)(iv) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain the agent authorization form and a copy of the replaced company's response supporting the information presented in the Disclosure Statement for the existing insurance as part of the policy record.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to provide the applicant with a revised Disclosure Statement in cases where the life insurance policy issued differed from the life insurance policy applied for.	9
J	The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to furnish the insurer whose coverage was replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract, and the completed Disclosure Statement within ten days of receipt of the application. A similar violation appeared in the prior report on examination.	9
K	The Company violated Section 403(d) of the New York Insurance Law and Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the statutorily required fraud warning statement immediately above the space provided for the signature of the person executing the claim form.	10

Respectfully submitted,

_____/s/_____
Juan Soto
Senior Insurance Examiner

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

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

_____/s/_____
Juan Soto

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31501

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, MARIA T. VULLO, 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:

JUAN SOTO

as a proper person to examine the affairs of the

FIRST SYMETRA NATIONAL LIFE INSURANCE COMPANY OF NEW YORK

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

COMPANY

with such other information as he shall deem requisite.

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

this 6th day of July, 2016

MARIA T. VULLO
Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

