



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
MARKET CONDUCT REPORT ON EXAMINATION  
OF THE  
GUARDIAN INSURANCE AND ANNUITY COMPANY, INC

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

JULY 16, 2020

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

GUARDIAN INSURANCE AND ANNUITY COMPANY, INC

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EXAMINER:

JULIUS ASUBONTENG

## TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Scope of examination	2
2. Description of Company	3
A. History	3
B. Territory and plan of operation	3
3. Market conduct activities	5
A. Advertising and sales activities	5
B. Underwriting and policy forms	5
C. Treatment of policyholders	5



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Superintendent

August 6, 2020

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

Madam:

In accordance with instructions contained in Appointment No. 32015, dated November 1, 2019, and annexed hereto, an examination has been made into the condition and affairs of The Guardian Insurance and Annuity Company, Inc. hereinafter referred to as “the Company,” at its primary location of books and records, located at 10 Hudson Yards, New York, NY 10001. The Company’s home office is located at 251 Little Falls Drive, Wilmington, DE 19808.

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

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

## 1. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2013, to December 31, 2018. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2018, 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.

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.

## 2. DESCRIPTION OF COMPANY

### A. History

The Company was incorporated as a stock life insurance company under the laws of the State of Delaware on March 2, 1970, and commenced business on December 27, 1971. The Company obtained its New York license on June 28, 1971. The Company was founded by The Guardian Life Insurance Company of America (GLIC) and remains its wholly owned subsidiary. The Company amended its Certificate of Incorporation on September 4, 1986, by adding to Article III, Section 3.2, "Management and Other Contracts," which states that no director shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (b) acts or omissions not in good faith or which involve intentional misconduct or a known violation of law or (c) for any transaction from which the director derived an improper personal benefit. The Company also amended its Certificate of Incorporation on December 21, 1999, by removing Article IV, Section 4.1 "Capital and Stock," which stated that the Corporation shall have authority to issue 20,000 shares of common stock with par value of \$100 each, and replacing it with Section 4.1 "Capital and Stock," which states that the Corporation shall have authority to issue 20,000 shares of common stock with par value of \$125 each.

This is the Company's first statutory examination by the Department.

### 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 all 50 states and the District of Columbia. As of December 31, 2018, 22.2% of life insurance premiums, 12.0% of annuity considerations, and 2.5% of deposit-type contract funds were received from New York. Policies are written on a non-participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business as of the December 31, 2018 examination date:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
New York	22.2%	California	13.3%
New Jersey	8.4	New York	12.0
California	7.5	Florida	8.2
Ohio	7.3	New Jersey	5.9
Delaware	<u>5.7</u>	Ohio	<u>5.1</u>
Subtotal	51.1%	Subtotal	44.5%
All others	<u>48.9</u>	All others	<u>55.5</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>

Deposit Type Funds

Florida	19.5%
Indiana	13.4
Arkansas	10.9
Pennsylvania	9.0
Illinois	<u>9.0</u>
Subtotal	61.7%
All others	<u>38.3</u>
Total	<u>100.0%</u>

The principal lines of business sold during the examination period were individual and group life insurance, and ordinary and group annuities. The products offered included whole life, variable universal life, fixed deferred and immediate annuities, variable deferred annuities and group pension contracts.

The Company's agency operations are conducted on a general agency and sales representative basis. The Company utilizes two individual insurance distribution methods: career sales representatives who are contracted with the Company and the Company's parent, GLIC; and independent broker-dealers (financial planners) and insurance sales agencies that are associated with unaffiliated U.S. banks engaged in insurance sales. The Company's affiliate, Park Avenue Securities LLC, a registered broker-dealer and investment adviser, also operates as the distributor and principal underwriter for the Company's variable products.

### 3. 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.

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

#### B. Underwriting and Policy Forms

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

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

#### C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, and 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.

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

Respectfully submitted,

\_\_\_\_\_/s/  
Julius Asubonteng  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Julius Asubonteng

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

**APPOINTMENT NO. 32015**

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

I, **LINDA A. LACEWELL**, 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:

**JULIUS ASUBONTENG**

as a proper person to examine the affairs of the  
**THE GUARDIAN INSURANCE AND ANNUITY COMPANY, INC.**  
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 1st day of November, 2019

**LINDA A. LACEWELL**  
Superintendent of Financial Services

By:

*Mark McLeod*

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**MARK MCLEOD**  
DEPUTY CHIEF - LIFE BUREAU

