



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
TRUSTMARK LIFE INSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2012

DATE OF REPORT:

MAY 13, 2014

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EXAMINER:

FLORA EGBUCHULAM

## TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Executive summary	2
2. Scope of examination	3
3. Description of Company	5
A. History	5
B. Holding company	5
C. Organizational chart	6
D. Service agreements	7
E. Management	10
4. Territory and plan of operations	12
A. Statutory and special deposits	12
B. Direct operations	12
C. Reinsurance	12
5. Significant operating results	13
6. Financial statements	15
A. Independent accountants	15
B. Net admitted assets	15
C. Liabilities, capital and surplus	16
D. Condensed summary of operations	17
E. Capital and surplus account	18
7. Market conduct activities	19
A. Advertising and sales activities	19
B. Underwriting and policy forms	19
C. Treatment of policyholders	21
8. Summary and conclusions	24



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

August 27, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 30991 dated September 3, 2013 and annexed hereto, an examination has been made into the condition and affairs of Trustmark Life Insurance Company of New York, hereinafter referred to as “the Company,” at its home office located at 126 South Swan Street, Albany, NY 12210.

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 and recommendation contained in this report are summarized below.

- The Company violated Section 4211(a) of the New York Insurance Law by failing to notify the Superintendent at least ten days prior to the election of directors. (See item 3E of this report)
- The Company violated Sections 91.3 and 91.4(a)(5)(f)(1) of Department Regulation No. 33 by failing to allocate administrative and investment advisory expenses for services received from affiliates in the same manner that was used to allocate expenses to the major annual statement lines of business. (See Section 3D of this report)
- The Company violated various sections of Department Regulation No. 74 and Section 3209(b)(1)(A) by utilizing the Buyer's Guide with incomplete disclosures; failing to provide either a quotation, illustration, or preliminary information at or prior to application; and by utilizing sales illustrations that did not contain all required disclosures;. (See item 7B of this report)
- The Company violated Section 3211(a)(1) of the New York Insurance Law by failing to provide a premium notice prior to termination of the policy. The Company violated Section 3211(b)(2) by providing premium notice with incomplete disclosures. The examiner recommends that in cases where proper lapse notice was not provided. the Company investigate and pay the appropriate beneficiary or beneficiaries, the total death benefit due under the policies where death occurred within one year of policy lapse processing. (See item 7C of this report)

## 2. SCOPE OF EXAMINATION

This is the first examination of the Company since it commenced business on June 17, 2009. The examination of the Company was a full scope examination as defined in the *NAIC Financial Condition Examiners Handbook, 2013 Edition* (the “Handbook”). The examination covers the period from June 17, 2009, through December 31, 2012. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2012, but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

In the course of the examination, a review was also made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The results of this review are contained in item 7 of this report.

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

This examination leveraged the work resulting from the examination of Trustmark Life Insurance Company (“Trustmark Life”), the Company’s parent and an Illinois domestic life insurer. The Illinois Department of Insurance (ILDOI) conducted their examination of Trustmark Life for the period ending December 31, 2012. A copy of their workpapers were provided to the examiners. The IT systems, corporate governance, and control environments are essentially the same for Trustmark Life and the Company; as a result, the examination team leveraged the work performed by the ILDOI wherever possible throughout the examination.

The Company is not subject to Model Audit Rule (“MAR”) or Sarbanes-Oxley Act of 2002 (“SOX”) requirements.

The Company was audited annually, for the years 2009 through 2011 by the accounting firm of Ernst and Young; and for the year 2012 by Deloitte and Touche. The Company received an unqualified opinion in all three years. Certain Deloitte and Touches' audit workpapers were reviewed and relied upon in conjunction with this examination. The Company shares an internal audit department with its parent and other affiliates within the holding company. Neither the Company nor its parent is subject to the Sarbanes-Oxley Act of 2002 ("SOX") or the Model Audit Rule ("MAR") requirements. The Company has Internal Controls over Financial Reporting ("ICFR") processes to safeguard financial reporting. Where applicable, ICFR workpapers and reports were reviewed and portions relied upon for this examination.

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

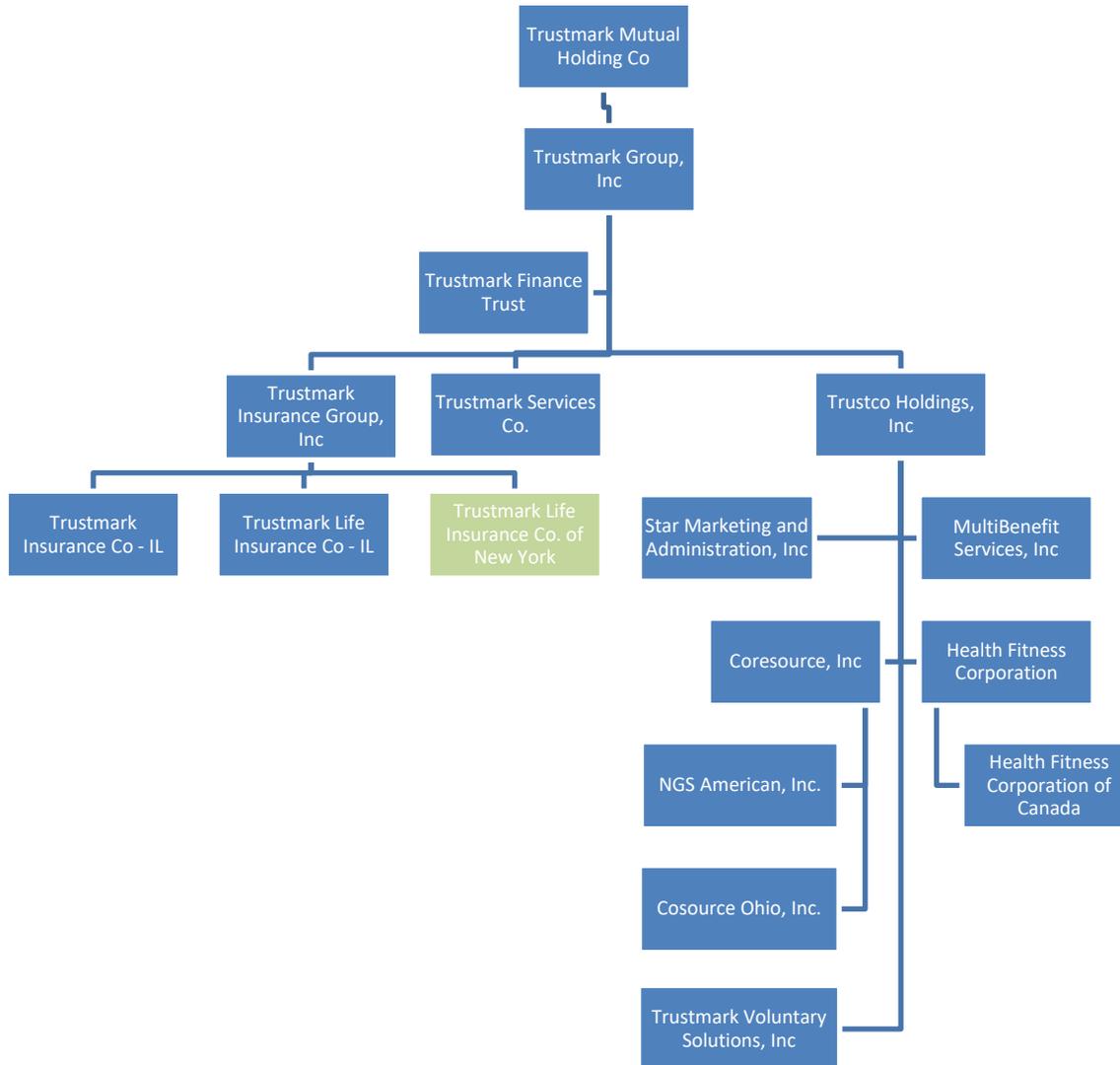
The Company was incorporated as a stock life insurance company under the laws of New York on March 21, 2008, was licensed and commenced business on June 17, 2009. Initial resources of \$6,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$4,000,000, were provided through the sale of 200,000 shares of common stock (with a par value of \$10 each) for \$30 per share. Trustmark Insurance Group, Inc. is the sole shareholder. In December 2010, the Company received a \$1.0 million cash contribution from its parent, Trustmark Insurance Group. In May 2013, the Company received another \$1.5 million capital contribution from its parent.

#### B. Holding Company

The Company is a wholly owned subsidiary of Trustmark Insurance Group, Inc. (“TIG”), an Illinois stock company. TIG is in turn a wholly owned subsidiary of the Trustmark Group, Inc., also a stock company incorporated under the laws of the state of Illinois. The ultimate parent of the Company is Trustmark Mutual Holding Company, an Illinois mutual insurance company.

### C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2012 follows:



#### D. Service Agreements

The Company had five 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
Administrative Agreement File No.40062	04/15/08	Trustmark Voluntary Benefits Solutions	The Company	Payroll deduction / Premium administration services	No expenses in 2010- 2012.
Intercompany Service Agreement File No.40062	02/02/09	Trustmark Life Insurance Company	The Company	All functions – including but not limited to accounting financial and financial reporting, corporate, human resources, legal and compliance, underwriting, claims, policyholder service, facilities management, marketing, actuarial, premium billing and collections, etc.	2010 – \$(197,943.70) 2011 – \$(193,337.59) 2012 – \$(233,307.27)
Intercompany Service Agreement File No.40062	02/02/09	Trustmark Insurance Company	The Company	Same as the above descriptions.	2010 – \$(79,177.72) 2011 – \$(49,827.82) 2012 – \$(63,653.22)
Revolving Credit Agreement File No.40062	01/01/09	Trustmark Life Insurance Company	The Company	Borrowing / Lending Services	N/A for 2010 thru 2012
Investment Management Agreement File No.40062	02/01/09	Trustmark Insurance Company	The Company	Investment Management Services	No expenses in 2010- 2012

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

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 with regard to reinsurance treaties or agreements at least forty-five days prior thereto, or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period:

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

During the period under review, the Company had an administrative services agreement with its affiliate, Trustmark Voluntary Benefit Solutions, Inc. (“TVBSI”). Schedule A of the agreement specifies a fee per policy of \$0.60 to be billed based on the number of employees (insureds) billed during the month. TVBSI provided administrative services worth \$3,320 during the 2010 to 2012 exam period. However, the Company was never billed and did not pay the \$3,320 administrative service charges. Therefore, the Company did not report the amount in the financial statements.

The Company has an Investment Management Agreement with Trustmark Insurance Company (“TIC”), an affiliate to provide investment management services to the Company at cost. The agreement also states that the methods for allocating expenses to the Company would be determined in accordance with the requirements of Regulation No. 33 of the New York Insurance Department. The agreement further provides that “Service Provider shall submit to the Company within 15 days of the end of each calendar month a written statement of the amount owed by the Company for services and the use of facilities pursuant to this Agreement in that calendar month, and the Company shall pay to the Service Provider within 30 days following receipt of such written statement the amount set forth in the statement” TIC provided the Company with \$47,312 worth of investment management services. However, the Company was never billed.

The examiner recommends that the Company, TVBSI and TIC adhere to the terms of their agreements in a manner that is fair and equitable and as filed with the Superintendent.

Department Regulation No. 33 states, in part  
Section 91.3: Investment Expenses

“Distribution of expenses to investment activities shall be made on the same principles as used for subdivision of expenses by major annual statement lines of business...”

Section 91.4: Standards and rules for allocation of income (receipts) and expenses

“... (a)(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. . .

(f) General expenses, taxes, licenses and fees.

(1) In distributing costs to lines of business, each company shall employ those principles and methods that will reasonably reflect the actual incidence of cost by line of business. The relative time spent, the extent of usage and the varying volume of work performed for each line of business shall be considered in distributing cost to major annual statement lines of business and, to the extent practicable, to secondary annual statement lines of business. The costs of any unit of activity in performing work for one line of business and only incidentally for other lines may be allocated entirely to the single line of business.”

Section 7 of the Investment Management Agreement with TIC provides that the methods for allocating expenses to the Company are to be determined in accordance with the requirements of Regulation No. 33 of the New York Insurance Department.

The TVBSI agreement and the TIC agreement noted in the preceding paragraph, the Company did not comply with the allocation requirements of Department Regulation No. 33. In cases where the Company reimbursed its affiliates for services, no allocations were performed. The Company received bills from its affiliates and simply paid the bills.

The Company violated Sections 91.3 and 91.4(a)(5)(f)(1) of Department Regulation No. 33 by failing to allocate administrative and investment advisory expenses for services received from affiliates in the same manner that was used to allocate expenses to the major annual statement lines of business.

### E. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine nor more 21 directors, provided however that the number of directors shall be increased to not less than 13 directors within one year following the end of the calendar year in which the Corporation's admitted assets exceed \$1,500,000,000. Directors are elected for a period of one year at the annual meeting of the stockholders held in March of each year. As of December 31, 2012, the board of directors consisted of nine members. Meetings of the board of directors are held at such place as may from time to time be fixed by resolution of the board of directors, or as may be specified in the notice of the meeting. The examiner noted that at least four meetings were held in each year under examination.

The nine board members and their principal business affiliation, as of December 31, 2012, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Blackmon, Frederick L. * Williamsburg, VA	Retired Eastern Michigan University, Board of Regents	2008
Goss, Philip A. Glencoe, IL	Senior Vice President and Chief Financial Officer Trustmark Life Insurance Company of New York	2010
Hitpas, Jerome H. Buffalo Grove, IL	Senior Vice President Investments and CIO Trustmark Life Insurance Company of New York	2011
Kozemko, Deborah* Albany, NY	Principal Hinman Straub	2008
McDonough, Dave Lake Forest, IL	Retired Trustmark Life Insurance Company of New York	2008
Moral, Alex N. Vernon Hills, IL	Senior Vice President Trustmark Life Insurance Company of New York	2010
Panczner, Christopher S. * New York, NY	Senior Vice President & General Counsel Montefiore Medical Center	2008
Pray, Joe L Lake Forest, IL	President and Chief Executive Officer Trustmark Life Insurance Company of New York	2009
Ziegler, Peter* Slinger, WI	Chairman YMCA Retirement Fund – USA	2008

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

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

Section 4211 of the New York Insurance Law states, in part:

“(a) No election of directors of a domestic stock life insurance company shall be valid unless a copy of the notice of election shall have been filed in the office of the superintendent at least ten days before the day of such election in addition to the service thereof, as required by section six hundred five of the business corporation law.

(b) Whenever any directors of such a company shall have resigned and successors shall have been chosen pursuant to the provisions of the by-laws, such successors shall not take office nor exercise their duties until ten days after written notice of their election shall have been filed in the office of the superintendent.”

The Company did not provide the required notice to the Superintendent regarding the election of the board of directors for the years 2010 to 2013, and did not notify the Superintendent at least ten days before the elected officers took office.

The Company violated Section 4211(a) of the New York Insurance Law by failing to notify the Superintendent at least ten days prior to the election of directors.

The Company also violated Section 4211(b) of the New York Insurance Law by failing to notify the Superintendent at least ten days prior to elected directors taking office.

The following is a listing of the principal officers of the Company as of December 31, 2012:

<u>Name</u>	<u>Title</u>
Joseph L. Pray	President and Chief Executive Officer
Philip A. Goss	Senior Vice President and Chief Financial Officer
Dennis L. Schoff	Senior Vice President, General Counsel and Secretary
Jerome H. Hitpas	Senior Vice President and Chief Investment Officer
Daniel Simpson	Senior Vice President and Chief Information Officer
Paul T. Schuster	Vice President and Treasurer

Frank Lettera, Compliance Officer and Assistant Secretary, is the designated consumer services officer per Section 216.4(c) of Department Regulation No. 64.

#### 4. TERRITORY AND PLAN OF OPERATIONS

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 State. The Company currently writes only individual universal life insurance and benefit riders. In 2012, 100% of life premiums were received from New York. Policies are written on a non-participating basis.

##### A. Statutory and Special Deposits

As of December 31, 2012, the Company had \$400,000 (par value) of United States Treasury Notes on deposit with the State of New York, its domiciliary state, for the benefit of all policyholders, claimants and creditors of the Company.

##### B. Direct Operations

The Company is a newly formed company that was licensed in 2009 and started issuing policies in 2010. During the period under review, the Company wrote only non-participating individual flexible premium universal life policies.

The Company's agency operations are conducted on a general agency or employee benefit brokers as general agents of the company.

##### C. Reinsurance

As of December 31, 2012, the Company had reinsurance treaties in effect with one company, which was an authorized reinsurer. The Company's life business is reinsured on a yearly renewable term basis. Reinsurance is provided on an automatic and/or facultative basis.

The maximum retention limit for individual life contracts is \$125,000. The total face amount of life insurance ceded as of December 31, 2012, was \$446,053, which represents 3.6% of the total face amount of life insurance in force.

## 5. 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 (decline) during the period under review. Since this is the Company's first examination, the comparison is between the Company's inception and the end of the examination period:

	<u>January 31,</u> <u>2009*</u>	<u>December 31,</u> <u>2012</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$9,859,450</u>	\$6,350,528	<u>\$(3,508,922)</u>
Liabilities	<u>\$3,859,212</u>	\$ 118,910	\$(3,740,302)
Common capital stock	\$2,000,000	\$2,000,000	\$0
Gross paid in and contributed surplus	4,000,000	5,000,000	1,000,000
Unassigned Funds (Surplus)	<u>237</u>	<u>(768,382)</u>	<u>(768,619)</u>
Total capital and surplus	<u>\$6,000,237</u>	<u>\$6,231,618</u>	\$ 231,381
Total liabilities, capital and surplus	<u>\$9,859,450</u>	<u>\$6,350,528</u>	<u>\$(3,508,922)</u>

\*date verified per on organization examination.

The decreases in assets and unassigned funds have been attributed to acquisition and other business expenses that are common with and/or associated with a new company. The Company relies on the parent and/or the Trustmark Mutual Holding Company for funding.

The Company's invested assets as of December 31, 2012, were mainly comprised of bonds (90.5), cash and short-term investments (8.3%) and other invested assets (1.1%).

The Company's entire bond portfolio, as of December 31, 2012, was comprised of investment grade obligations.

The Company reported net losses from operations for the ordinary life line of business after federal income taxes but before realized capital gains (losses) of \$206,627, \$312,704 and \$324,256 for 2010, 2011 and 2012 respectively, in the Company's filed annual statements.

The Company's 2012 and 2011 operating losses were mainly due to increased reserves and general insurance expenses; the 2010 operating loss was mainly due to startup cost of the new company.

## 6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2012, as contained in the Company's 2012 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, 2012 filed annual statement.

### A. Independent Accountants

The firm of Deloitte and Touche was retained by the Company to audit the Company's combined statutory basis statements of financial position of the Company as of December 31<sup>st</sup> of 2012, and the related statutory-basis statements of operations, capital and surplus, and cash flows for the year then ended. Ernst and Young was retained to audit the Company's combined statutory basis statements of financial position, and the related statutory-basis statements of operations, capital and surplus, and cash flows of the Company for the years 2010 and 2011.

Both Deloitte and Touch and Ernst and Young 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	\$5,744,206
Contract loans	529,890
Investment income due and accrued	69,025
Receivables from parent, subsidiaries and affiliates	864
Health care and other amounts receivable	<u>6,543</u>
Total admitted assets	<u>\$6,350,528</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 23,899
Contract claims:	
Life	5,000
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	56
Interest maintenance reserve	41,988
General expenses due or accrued	17,750
Taxes, licenses and fees due or accrued, excluding federal income taxes	2,264
Amounts held for agents' account	6,477
Remittances and items not allocated	(66)
Miscellaneous liabilities:	
Asset valuation reserve	4,327
Payable to parent, subsidiaries and affiliates	17,215
Total liabilities	<u>\$ 118,910</u>
Common capital stock	\$2,000,000
Gross paid in and contributed surplus	\$5,000,000
Unassigned funds (surplus)	<u>(768,382)</u>
Surplus	<u>\$4,231,618</u>
Total capital and surplus	<u>\$6,231,618</u>
Total liabilities, capital and surplus	<u>\$6,350,528</u>

D. Condensed Summary of Operations

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Premiums and considerations	\$ 0	\$ 4,826	\$ 43,426	\$ 95,957
Investment income	<u>151,551</u>	<u>163,490</u>	<u>172,525</u>	<u>174,163</u>
Total income	<u>\$151,551</u>	<u>\$ 168,316</u>	<u>\$ 215,950</u>	<u>\$ 279,119</u>
Benefit payments	\$ 0	\$ 0	\$ 0	\$ 5,026
Increase in reserves	0	229	4,222	19,448
Commissions	0	4,581	35,320	56,578
General expenses and taxes	<u>26,117</u>	<u>372,133</u>	<u>489,113</u>	<u>513,323</u>
Total deductions	<u>\$ 26,117</u>	<u>\$ 376,943</u>	<u>\$ 528,655</u>	\$ 594,375
Net gain (loss)	\$125,434	\$(208,627)	\$(312,704)	\$(324,256)
Federal and foreign income taxes	<u>43,902</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net gain (loss) from operations before net realized capital gains	<u>\$ 81,532</u>	<u>\$(208,627)</u>	<u>\$(312,704)</u>	<u>\$(324,256)</u>
Net income	<u>\$ 81,532</u>	<u>\$(208,627)</u>	<u>\$(312,704)</u>	<u>\$(324,256)</u>

E. Capital and Surplus Account

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Capital and surplus, December 31, prior year	\$ <u>0</u>	\$ <u>6,081,332</u>	\$ <u>6,871,937</u>	\$ <u>6,559,723</u>
Net income	\$ 81,532	\$ (208,627)	\$ (312,704)	\$ (324,256)
Change in net deferred income tax	0	73,001	109,433	98,489
Change in non-admitted assets and related items	0	(73,001)	(109,433)	(98,489)
Change in asset valuation reserve	(199)	(769)	490	(3,849)
Capital changes:				
Paid in	2,000,000	0	0	0
Surplus adjustments:				
Paid in	<u>4,000,000</u>	<u>1,000,000</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus for the year	\$ <u>6,081,332</u>	\$ <u>790,605</u>	\$ <u>(312,214)</u>	\$ <u>(328,105)</u>
Capital and surplus, December 31, current year	\$ <u>6,081,332</u>	\$ <u>6,871,937</u>	\$ <u>6,559,723</u>	\$ <u>6,231,618</u>

## 7. 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 of issued policies, and the applicable policy forms.

1. Insurance Regulation No. 74, 11 NYCRR Section, Section 53-2.6 states, in part:

“(a) ... If the use of life insurance cost indexes is required by section 3209, the Life Insurance Buyer's Guide shall contain an explanation describing the use of such indexes set forth in section 53-2.8 of this Subpart. A separate addendum for such explanation may be used which is provided at the time that the buyer's guide is delivered.”

Section 53-2.8 - Addendum to Life Insurance Buyer's Guide states, in part:

“After you have decided which kind of life insurance fits your needs, look for a good buy. Your chances of finding a good buy are better if you use two types of index numbers that have been developed to aid in shopping for life insurance. One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index." It will be worth your time to try to understand how these indexes are used, but in any event, use them only for comparing the relative costs of similar policies. LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS. ....”

The examiner reviewed 36 underwriting files and noted that in all 36 files the Company gave the insured and/or applicant a copy of Buyer's Guide that does not include the addendum or the details required by Section 53-2.8 of Department Regulation No. 74.

The Company violated Section 53-2.8 of Department Regulation No. 74 by failing to include the addendum in the Buyer's Guide provided to applicants.

The examiner recommends that the Buyer's Guide to include the addendum required pursuant to section 53-2.8 of Department Regulation No. 74 if the use of life insurance cost indexes is required.

2. Section 3209 of the New York Insurance Law states, in part:

“(b) (1) 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....”

Insurance Regulation No. 74, 11 NYCRR, Section 53-3.1 states, in part:

(d) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this Subpart is required, ...”

Insurance Regulation No. 74, 11 NYCRR, Section 53-3.1(e) states, in part:

“Potential enrollees of non-term group life subject to this Subpart shall be furnished a quotation with the enrollment materials. ... This quotation shall not be considered an illustration for purposes of this Subpart, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection....”

The Company's policy form was identified as one to be marketed with an illustration, requiring that a basic illustration prepared and delivered in accordance with Insurance Regulation No. 74, Section 53-3.1. The Company used a quotation pursuant to Section 53-3.1(e) which provides that potential enrollees of non-term group life be furnished a quotation at time of sale, and a basic illustration be provided at policy delivery. The Company then did not furnish the quotation at enrollment. Merely showing a document on a laptop screen does not meet the requirement that the quotation be furnished to the potential enrollee.

Therefore, an illustration should have been provided as required by 11 NYCRR 53-3.1(d) at time of policy application as required by 11 NYCRR 53-3.5(a). The illustration was not provided at or prior to application. Therefore, the preliminary information required by IL Section 3209(b)(1)(A), and 11 NYCRR 53-2.1 for policies subject to section 4232(b), should have been provided. It was not.

The Company violated Insurance Regulation No.74, at 11 NYCRR, Section 53-3.1(d) by failing to prepare and deliver an illustration in compliance with the regulation, for a policy form that was identified to be marketed with an illustration. Since the illustration was not provided, the Company violated Insurance Law Section 3209(b)(1)(A) by not providing preliminary information at or prior to application.

3. Section 53-3.3 of Department Regulation No. 74 states, in part:

**“(c) *Numeric summary***

(1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. Except as provided in subdivision (g) of this Section, this summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years 5, 10, 20 and 30; ...”

The examiner noted that the illustrations utilized during the examination period did not include Section 53-3.3(c)(1) - numeric summary information for policy years 20 and at age 70, where applicable.

The Company violated Section 53-3.3(c)(1) of Department Regulation No. 74 by utilizing illustrations that do not contain the numeric summary information for policy years 20 and at age 70, where applicable.

**C. Treatment of Policyholders**

The examiner reviewed a sample of lapses processed during the period under review. 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 3211 of New York Insurance Law states, in part:

“(a)(1) No policy of life insurance or non-cancellable disability insurance delivered or issued for delivery in this state, and no life insurance certificate delivered or issued for delivery in this state shall terminate or lapse by reason of default in payment of any premium, installment, or interest on any policy loan in less than one year after such default, unless, for scheduled premium policies, a notice shall have been duly mailed at least fifteen and not more than forty-five days prior to the day when such payment becomes due, or for life insurance policies in which the amount and frequency of premiums may vary, no earlier than and within thirty days

after the day when the insurer determines that the net cash surrender value under the policy is insufficient to pay the total charges that are necessary to keep the policy in force . . .

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

(1) be duly mailed to the last known address of the policyowner, or if any other person shall have been designated in writing to receive such notice, then to such other person;

(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 . . .

(f) This section shall not apply to:

(2) Any policy of insurance requiring the payment of premiums monthly or at shorter intervals, provided in the case of policies of life insurance the insurer issuing such policy elects with respect to all such policies to mail a written notice within six months after termination or lapse to the insured or to any other person who shall have been designated in writing to receive such notice, stating the type and amount of any automatic nonforfeiture benefit in force.”

1. The examiner selected a sample of 32 lapsed policy files for review. In 7 of the 32 (22%) files reviewed, the examiner noted that the Company did not provide the insured with a premium notice prior to termination of the policy. In 18 of the 32 (56%) files reviewed, the initial premium notices were sent anywhere from 31 to 125 days after it was determined that the net cash surrender value under the policy was insufficient to pay the total charges that were necessary to keep the policy in force.

The Company violated Section 3211(a)(1) of the New York Insurance Law by failing to mail the premium notices to seven insureds after it was determined that the net cash surrender value under the policy was insufficient to pay the total charges that were necessary to keep the policy in force, and by failing to mail the premium notices to the other 21 insureds in a timely manner.

2. In the 32 files reviewed, the initial notice, premium due notice, past due notice, and grace period notice did not include the Section 3211(b)(2) statement 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 Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include a statement 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 on the premium, past due or grace period due notices.

3. The examiner recommends that in cases where proper lapse notice was not provided, the Company investigate and pay the appropriate beneficiary or beneficiaries, the total death benefit due under the policies where death occurred within one year of policy lapse processing.

4. The examiner also noted that the Company has no written rules, guidelines or manual in place for processing policy lapses and terminations.

The examiner recommends that a written guideline be developed by the Company to address the disclosure and timeliness requirements of Section 3211 of New York Insurance Law.

## 8. 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, TVBSI and TIC adhere to the terms of their agreements in a manner that is fair and equitable and as filed with the Superintendent.	8
B	The Company violated Sections 91.3 and 91.4(a)(5)(f)(1) of Department Regulation No. 33 by failing to allocate administrative and investment advisory expenses for services received from affiliates in the same manner that was used to allocate expenses to the major annual statement lines of business.	9
C	The Company violated Section 4211(a) of the New York Insurance Law by failing to notify the Superintendent at least ten days prior to the election of directors. The Company also violated Section 4211(b) of the New York Insurance Law by failing to notify the Superintendent at least ten days prior to elected directors taking office.	11
D	The Company violated Section 53-2.8 of Department Regulation No. 74 by failing to include the addendum in the Buyer's Guide provided to applicants.	19
E	The examiner recommends that the Buyer's Guide to include the addendum required pursuant to section 53-2.8 of Department Regulation No. 74 if the use of life insurance cost indexes is required.	20
F	The Company violated Insurance Regulation No.74, at 11 NYCRR, Section 53-3.1(d) by failing to prepare and deliver an illustration in compliance with the regulation, for a policy form that was identified to be marketed with an illustration. Since the illustration was not provided, the Company violated Insurance Law Section 3209(b)(1)(A) by not providing preliminary information at or prior to application.	21
G	The Company violated Section 53-3.3(c)(1) of Regulation No. 74 by utilizing illustrations that do not contain all required disclosures.	21

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The Company violated Section 3211(a)(1) by failing to provide premium notice prior to termination of policy, and Section 3211(b)(2) by providing premium notice with incomplete disclosures.	22 - 23
I	The examiner recommends that in cases where proper lapse notice was not provided. the Company investigate and pay the appropriate beneficiary or beneficiaries, the total death benefit due under the policies where death occurred within one year of policy lapse processing.	23
J	The examiner recommends that a written guideline be developed by the Company to address the disclosure and timeliness requirements of Section 3211 of New York Insurance Law.	23

Respectfully submitted,

\_\_\_\_\_/s/  
Flora Egbuchulam  
Senior Examiner

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

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

\_\_\_\_\_/s/  
Flora Egbuchulam  
Senior Examiner

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

APPOINTMENT NO. 30991

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:

**FLORA EGBUCHULAM**

as a proper person to examine the affairs of the

**TRUSTMARK 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 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 3<sup>rd</sup> day of September, 2013

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

