

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON FINANCIAL EXAMINATION  
OF  
FIRST SECURITY BENEFIT LIFE INSURANCE AND ANNUITY COMPANY  
OF NEW YORK

CONDITION:

DECEMBER 31, 2013

DATE OF REPORT:

JUNE 9, 2015

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OF  
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EXAMINER:

CHARLES P. MC MORROW, CFE

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

June 9, 2015

Honorable Benjamin M. Lawsky  
Superintendent of Financial Services  
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 31099, dated December 19, 2014, and annexed hereto, an examination has been made into the condition and affairs of the First Security Benefit Life Insurance and Annuity Company of New York, hereinafter referred to as “the Company,” at the offices of its affiliate, Security Benefit Life Insurance Company, located at One Security Benefit Place, Topeka, Kansas 66636. The Company’s home office is located at 800 Westchester Avenue, Rye Brook, NY 10573

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

The examination of the Company was a full scope examination as defined in the NAIC Financial Condition Examiners Handbook, 2014 Edition (the "Handbook"). The examination covers the four-year period from January 1, 2010 to December 31, 2013. 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, 2013, but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

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.

The examination was conducted in conjunction with the coordinated examination of the Company's affiliate, Security Benefit Life Insurance Company, by the Kansas Insurance Department. Since both states are accredited by the NAIC, they deemed it appropriate to rely on each other's work.

Information about the Company's organizational structure, business approach and control environment were utilized to develop the examination approach. The Company's risks and management activities were evaluated incorporating the NAIC's nine branded risk categories.

These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic
- Credit
- Market
- Liquidity
- Legal
- Reputational

The Company was audited annually, for the years 2010 through 2013, by the accounting firm of Ernst & Young LLP. The Company received an unqualified opinion in all four years. Certain audit work-papers of the accounting firm were reviewed and relied upon in conjunction with this examination. The Company has an internal audit department that includes internal controls over financial reporting which is tasked with assessing the internal control structure and compliance with the Model Audit Rule (“MAR”). Where applicable, MAR work-papers and reports were reviewed and portions were relied upon for this examination.

There were no financial violations or recommendations contained in the prior report on 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.

## 2. DESCRIPTION OF COMPANY

### A. History

The Company was incorporated as a stock life insurance company under the laws of New York on November 8, 1994, and was licensed and commenced business on July 31, 1995. 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 to Security Benefit Life Insurance Company ("SBL"), a Kansas life insurance company. On February 24, 1995, all of the stock was transferred to Security Benefit Group, Inc. ("SBG"), a wholly owned subsidiary of SBL.

On September 8, 1995, the Company merged with Pioneer National Life Insurance Company ("PNL"), a stock life insurance company organized under the laws of the state of Kansas. As of that date, PNL ceased to exist and First Security Benefit Life Insurance and Annuity Company of New York became the surviving company. As a result of this transaction, the Company's paid-in and contributed surplus was increased to \$4,600,000. In 2004, SBG contributed paid in surplus to the Company in the amount of \$2,000,000. The contribution increased the Company's gross paid-in and contributed surplus to \$6,600,000. In August 2006, SBG merged with and into the Company's affiliate Security Benefit Corporation ("SBC"). In August 2006, SBC filed and the Department approved a cash surplus contribution of \$2,000,000 to the Company, which increased gross paid in and contributed surplus to \$8,600,000.

In February 2010, Security Benefit Mutual Holding Company (SBMHC), the previous ultimate parent of the Company, entered into a definitive agreement with Guggenheim SBC Holdings, LLC (the "Purchaser") whereby the Purchaser would purchase all of the outstanding capital stock of SBC, the Company's parent, and SBMHC would demutualize and be liquidated. All regulatory approvals were received and the transaction closed on July 30, 2010.

The Company received capital contributions in cash from its parent, SBC, in the amount of \$5,000,000 on September 26, 2013, and \$20,000,000 on December 20, 2013.

As of December 31, 2013, the Company's common capital stock and gross paid-in and contributed surplus was \$2,000,000 and \$33,600,000, respectively.

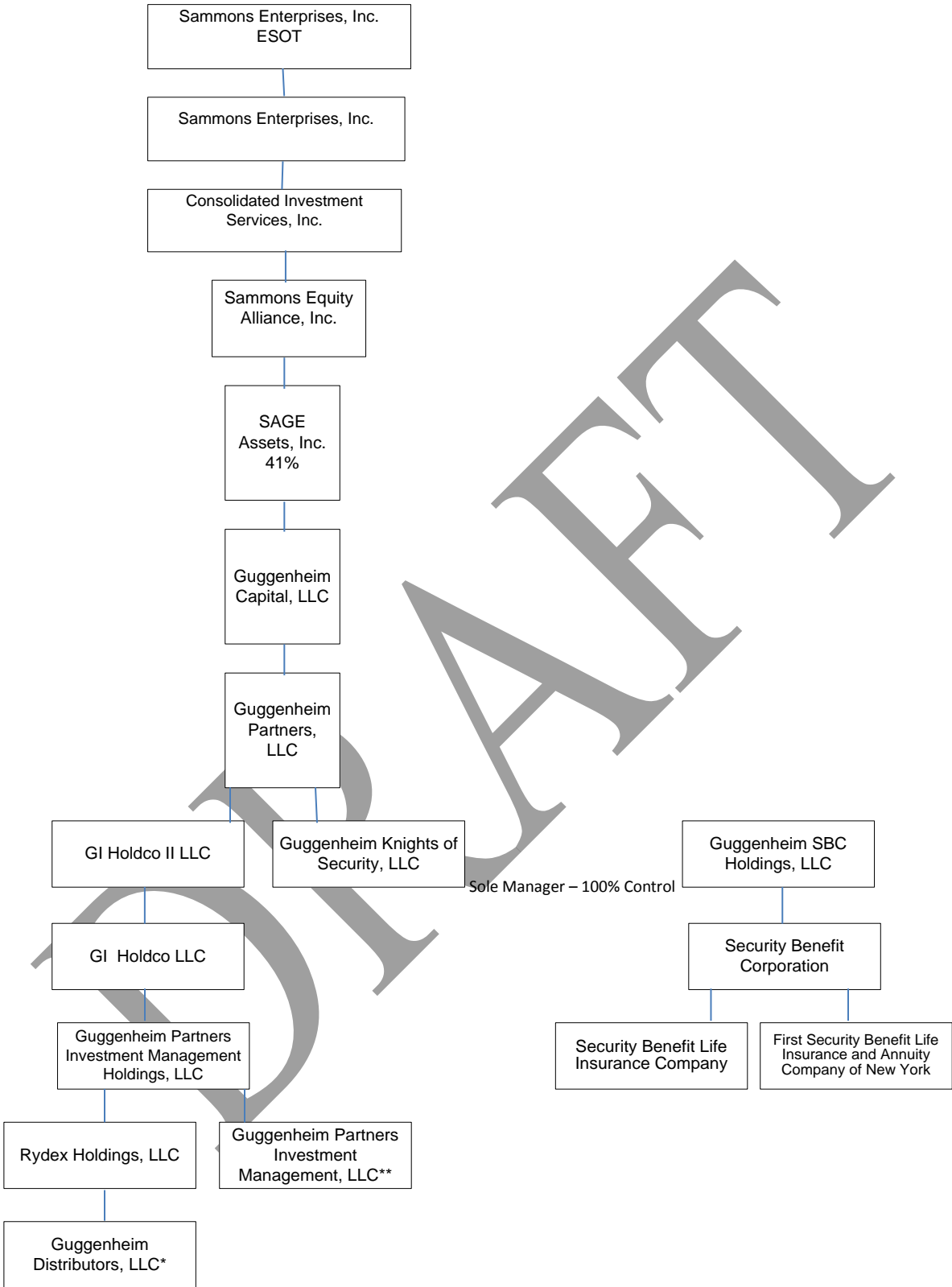
B. Holding Company

The Company is a wholly owned subsidiary of Security Benefit Corporation, a Kansas holding company and management services company whose parent is Guggenheim SBC Holdings, LLC. The ultimate holding company of the Company is Sammons Enterprises, Inc. ESOT.

C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2013 is as follows:





\* Guggenheim Distributors, LLC was formerly known as Rydex Distributors, LLC.

\*\* Guggenheim Partners Investment Management, LLC was created out of a merger between Guggenheim Investment Management, LLC and another Guggenheim entity in June 2012.

#### D. Service Agreements

The Company had seven 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 Services Agreement (File #34730)	1/1/06	Security Benefit Life ("SBL")	The Company	Underwriting, claims, actuarial	2013: \$(500,216) 2012: \$(190,798) 2011: \$(109,747) 2010: \$(119,997)
Administrative Services Agreement (File #33228)	1/1/05	Security Benefit Corporation ("SBC")	The Company	Accounting, marketing, advertising, functional support, and disaster recovery	2013: \$(191,614) 2012: \$ (80,272) 2011: \$ (62,160) 2010: \$ (55,319)
Distribution Agreement (File #s 30355 and 42840C)	7/1/02 (cont. 7/10)	Security Distributors, Inc. ("SDI")	The Company	Distribution of variable annuity contracts	2013: \$ (5,873) 2012: \$(66,391) 2011: \$ (2,542) 2010: \$ (9,425)
Services Agreement (File #35652)	10/1/06	The Company	Security Management Company ("SMC")	Administrative services	2013: \$48,387 2012: \$53,471 2011: \$54,471 2010: \$57,910
Services Agreement and Third Party Investor Services Agreement (File #s 42074 and 42074A)	1/08 (cont. 1/10)	The Company	Rydex Distributors, LLC ("Rydex")	Record-keeping	2013: \$183,857 2012: \$194,181 2011: \$273,018 2010: \$261,449
Participation Agreement (File #s 42074B and 45350)	1/08 (cont. 1/10 and 1/12)	Rydex	The Company	Offering of portfolio shares	2013: \$0 2012: \$0 2011: \$0 2010: \$0
Investment Management Agreement (File #44289)	8/8/11	Guggenheim Partners Investment Management, LLC ("GPIM")	The Company	Investment advisory services	2013: \$(294,057) 2012: \$ (43,636) 2011: \$ (13,803) 2010: \$ 0

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

### E. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 21 directors. The number of directors shall be increased to not less than 13 members within one year following the end of the calendar year in which the Company's admitted assets exceed \$1.5 billion. At least one-third of the directors, but not less than four shall not be officers or employees of the Corporation or its affiliates. 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, 2013, the board of directors consisted of ten members. Meetings of the board are held in March and September.

The ten board members and their principal business affiliation, as of December 31, 2013, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Stephen A. Crane* New York, NY	Self-Employed Insurance and Reinsurance Consultant	1999
Wayne S. Diviney* Clifton, VA	Chief Executive Officer and Chief Financial Officer The Sail Time Group	2007
John F. Guyot Lawrence, KS	Vice President, General Counsel and Secretary First Security Benefit Life Insurance and Annuity Company of New York	2008
Stephen R. Herbert* Pound Ridge, NY	Partner Locke and Herbert	1998
Michael P. Kiley Holmdel, NJ	Chief Executive Officer First Security Benefit Life Insurance and Annuity Company of New York	2010
Anthony D. Minella Darien, CT	Vice President and Chief Investment Officer First Security Benefit Life Insurance and Annuity Company of New York	2013
Roger S. Offermann Topeka, KS	Vice President and Lead Actuary First Security Benefit Life Insurance and Annuity Company of New York	2012

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Barry G. Ward Lawrence, KS	Vice President, Chief Financial Officer, Chief Risk Officer and Treasurer First Security Benefit Life Insurance and Annuity Company of New York	2013
Katherine P. White* New York, NY	Adjunct Professor Fordham University, School of Law	1994
Douglas G. Wolff Lawrence, KS	President First Security Benefit Life Insurance and Annuity Company of New York	2010

\* Not affiliated with the Company or any other company within 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.

The following is a listing of the principal officers of the Company as of December 31, 2013:

<u>Name</u>	<u>Title</u>
Douglas G. Wolff	President
Michael P. Kiley	Chief Executive Officer
John F. Guyot	Vice President, General Counsel, and Secretary
Susan J. Lacey	Vice President and Controller
Anthony D. Minella	Vice President and Chief Investment Officer
Roger S. Offermann	Vice President and Lead Actuary
Jeanne R. Slusher	Vice President and Director of Internal Audit
Barry G. Ward	Vice President, Chief Financial Officer, Chief Risk Officer and Treasurer
Danny D. Purcell	Assistant Vice President and Valuation Actuary
Peggy S. Avey*	Chief Administrative Officer & Assistant Secretary

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

### 3. 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 in two states, namely New York and Kansas. In 2013, all annuity considerations were received from New York. Policies are written on a non-participating basis.

#### A. Statutory and Special Deposits

As of December 31, 2013, the Company had \$580,654 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 actively markets individual variable and fixed annuities and has never engaged in the sale of life or accident and health insurance. The Company inherited non-participating life insurance policies from PNL that were 100% reinsured with SBL at the time of the PNL merger with the Company. This business is in run-off status.

The Company's agency operations are conducted on a general agency and direct response basis, primarily marketing individual variable and fixed annuities through bank channels, independent broker-dealer systems, and T. Rowe Price Investment Services, Inc.

In 2013 the fixed annuity product, Premier Choice, represented 94% of total new business whereas the variable annuity products, AdvisorDesigns, EliteDesigns, and SecureDesigns, represented 6% of total new business. The fixed annuities are primarily distributed through the bank channels and the variable products are distributed by an affiliate, SDI, pursuant to a distribution agreement. Neither the Company nor SDI has a captive sales force. SDI enters into selling agreements with independent member FINRA broker-dealers to solicit applications for the Company's variable annuity products.

### C. Reinsurance

As of December 31, 2013 the Company had three ceded reinsurance treaties in effect; two with Security Benefit Life Insurance Company (SBL) which, during the examination period, was an authorized affiliated reinsurer, and one with Guggenheim Life and Annuity Company (GLAC), an unauthorized affiliate.

One of the SBL treaties reinsures, on a 100% coinsurance basis, the life insurance policies that were inherited from PNL as a result of the merger in 1995. The other SBL treaty, effective October 1, 2004, reinsures on a 100% coinsurance basis the insurance risk of certain living benefit riders issued by the Company on its variable annuity policies, namely the Guaranteed Minimum Income Benefit (GMIB) and Guaranteed Minimum Withdrawal Benefit (GMWB) riders. Both agreements are collateralized by a funds withheld account supporting 100% of the reserves.

The agreement with GLAC, effective January 26, 2012, is a retrocessional agreement whereby the Company ceded to GLAC on a 100% coinsurance basis a book of group annuity business assumed from Standard Security Life Insurance Company of New York. The agreement with GLAC is collateralized by funds withheld which exceed the total reserves on the book of business ceded at December 31, 2013.

The total face amount of life insurance ceded as of December 31, 2013 was \$155,532 which represents 100% of the total face amount of life insurance in force.

The one assumed reinsurance treaty in-force at December 31, 2013 was with Standard Security Life of New York, effective January 26, 2012, on group annuity business, covering volunteer firemen, assumed on a 100% coinsurance basis and retro-ceded 100% to GLAC.

#### 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 (decline) during the period under review:

	December 31, <u>2009</u>	December 31, <u>2013</u>	Increase (Decrease)
Admitted assets	<u>\$180,191,943</u>	<u>\$617,103,510</u>	<u>\$436,911,567</u>
Liabilities	<u>\$169,484,375</u>	<u>\$586,465,386</u>	<u>\$416,981,011</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	8,600,000	33,600,000	25,000,000
Unassigned funds (surplus)	<u>107,568</u>	<u>(4,961,876)</u>	<u>(5,069,444)</u>
Total capital and surplus	<u>\$ 10,707,568</u>	<u>\$ 30,638,124</u>	<u>\$ 19,930,556</u>
Total liabilities, capital and surplus	<u>\$180,191,943</u>	<u>\$617,103,510</u>	<u>\$436,911,567</u>

The Company's invested assets as of December 31, 2013, exclusive of separate accounts, were mainly comprised of bonds (63%) and cash and short-term investments (35%).

The Company's entire bond portfolio, as of December 31, 2013, was comprised of investment grade obligations.

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>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
In-force, end of previous year	1,992	1,895	1,767	2,871
Issued during the year	40	39	1,317	4,181
Other net changes during the year	( 137)	( 168)	( 213)	( 229)
Outstanding, end of current year	<u>1,895</u>	<u>1,767</u>	<u>2,871</u>	<u>6,823</u>

The number of outstanding ordinary annuities grew significantly in 2013 due to the Company's entry into the New York bank market.

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>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Ordinary individual annuities	\$933,863	\$255,050	\$(2,932,912)	\$(3,854,658)
Group annuities	<u>0</u>	<u>0</u>	<u>67,091</u>	<u>50,641</u>
Net gain (loss) from operations	<u>\$933,863</u>	<u>\$255,050</u>	<u>\$(2,865,821)</u>	<u>\$(3,804,017)</u>



## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2013, as contained in the Company's 2013 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review.

### A. Independent Accountants

The firm of Ernst & Young LLP was retained by the Company to audit the Company's combined statutory basis statements of financial position as of December 31, 2013 and 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.

Ernst & Young 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	\$296,311,310
Preferred Stock	373,324
Cash, cash equivalents and short term investments	163,415,790
Contract loans	98,587
Other invested assets (Schedule BA)	5,544,380
Receivable for securities	29,623
Investment income due and accrued	1,953,224
Current federal and foreign income tax recoverable and interest thereon	999,726
Net deferred tax asset	1,734,309
Guaranty funds receivable or on deposit	243
Receivables from parent, subsidiaries and affiliates	306,583
Aggregate write-ins for other than invested assets	81,700
From Separate Accounts, Segregated Accounts and Protected Cell Accounts	<u>146,254,711</u>
 Total admitted assets	 <u>\$617,103,510</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$280,338,376
Contract Claims: Life	1,809
General expenses due or accrued	1,724,368
Transfers to Separate Accounts due or accrued	(1,460,285)
Taxes, licenses and fees due or accrued, excluding federal income taxes	322,118
Amounts withheld or retained by company as agent or trustee	580
Remittances and items not allocated	272,461
Miscellaneous liabilities:	
Asset valuation reserve	826,670
Payable to parent, subsidiaries and affiliates	27,811
Funds held under coinsurance	157,000,528
Payable for securities	1,156,239
From Separate Accounts statement	<u>146,254,711</u>
Total liabilities	<u>\$586,465,386</u>
Common capital stock	\$ 2,000,000
Gross paid in and contributed surplus	33,600,000
Unassigned funds (surplus)	<u>(4,961,876)</u>
Total capital and surplus	<u>\$ 30,638,124</u>
Total liabilities, capital and surplus	<u>\$617,103,510</u>

D. Condensed Summary of Operations

	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Premiums and considerations	\$ 5,317,768	\$ 4,235,601	\$ 77,057,341	\$216,933,605
Investment income	566,501	521,182	571,493	3,488,855
Commissions and reserve adjustments on reinsurance ceded	0	0	733,328	717,195
Miscellaneous income	<u>3,498,652</u>	<u>3,261,834</u>	<u>2,795,738</u>	<u>2,696,657</u>
Total income	<u>\$ 9,382,921</u>	<u>\$ 8,018,617</u>	<u>\$ 81,157,900</u>	<u>\$223,836,312</u>
Benefit payments	\$ 21,623,871	\$ 22,398,792	\$ 21,179,770	\$ 29,789,334
Increase in reserves	582,186	630,736	68,416,487	199,617,331
Commissions	622,656	502,290	3,840,545	7,661,444
General expenses and taxes	741,424	715,915	1,196,361	1,816,948
Net transfers to (from) separate accounts	(15,508,181)	(16,271,543)	(10,881,821)	(11,092,972)
Miscellaneous deductions	<u>149,657</u>	<u>(77,481)</u>	<u>(99,518)</u>	<u>201,195</u>
Total deductions	<u>\$ 8,211,613</u>	<u>\$ 7,898,709</u>	<u>\$ 83,651,824</u>	<u>\$227,993,280</u>
Net gain (loss)	\$ 1,171,308	\$ 119,908	\$ (2,493,924)	\$ (4,156,968)
Federal and foreign taxes Incurred	<u>(237,445)</u>	<u>135,142</u>	<u>(371,897)</u>	<u>352,951</u>
Net gain (loss) from operations before net realized capital gains	\$ 933,863	\$ 255,050	\$ (2,865,821)	\$ (3,804,017)
Net realized capital gains (losses)	<u>0</u>	<u>0</u>	<u>2</u>	<u>(20,183)</u>
Net income (loss)	<u>\$ 933,863</u>	<u>\$ 255,050</u>	<u>\$ (2,865,819)</u>	<u>\$ (3,824,200)</u>

The dramatic increase in annuity writings in 2013 was the result of the Company's entry into the New York bank marketplace.

The net losses in 2012 and 2013 were primarily due to a low return on the Company's investment portfolio as well as a substantial amount of their investments in cash which represented over 26% of their entire investments at year-end 2013. Almost the entire bond portfolio consisted of high grade bonds which in the current market have historically low yields.

E. Capital and Surplus Account

	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital and Surplus				
December 31, prior year	\$ <u>10,707,568</u>	\$ <u>11,641,264</u>	\$ <u>11,861,140</u>	\$ <u>9,800,980</u>
Net Income	\$ 933,863	\$ 255,050	\$(2,865,819)	\$(3,824,200)
Change in net deferred income tax	(298,841)	29,737	1,785,794	1,250,265
Change in non-admitted assets	303,771	(32,936)	(679,435)	(1,092,396)
Change in asset valuation reserve	(4,725)	(8,604)	(300,700)	(496,525)
Write-ins for gains and losses in Surplus	(373)	(23,371)	0	0
Changes in paid-in capital	<u>0</u>	<u>0</u>	<u>0</u>	<u>25,000,000</u>
Net change in capital and surplus for the year	\$ <u>933,695</u>	\$ <u>219,876</u>	\$ <u>(2,060,160)</u>	\$ <u>20,837,144</u>
Capital and Surplus				
December 31, current year	\$ <u>11,641,263</u>	\$ <u>11,861,140</u>	\$ <u>9,800,980</u>	\$ <u>30,638,124</u>



APPOINTMENT NO. 31099

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:

**CHARLES P. McMORROW**  
**(INS REGULATORY INSURANCE SERVICES, INC.)**

as a proper person to examine the affairs of the

**FIRST SECURITY BENEFIT LIFE INSURANCE AND ANNUITY COMPANY OF  
NEW YORK**

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

**COMPANY**

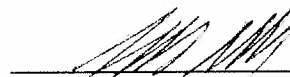
with such other information as he shall deem requisite.

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

this 19th day of December, 2014

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

