



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

CONDITION:

DECEMBER 31, 2013

DATE OF REPORT:

APRIL 30, 2015

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EXAMINER:

MANISH GAJIWALA

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

July 17, 2017

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

Madam:

In accordance with instructions contained in Appointment No. 31264, dated January 7, 2014, and annexed hereto, an examination has been made into the condition and affairs of First Security Benefit Life Insurance and Annuity Company of New York, hereinafter referred to as “the Company,” at its home office previously located at 800 Westchester Avenue, Suite #641-N, 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. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated various sections of Insurance Regulation No. 60. (See item 4A of this report)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by using applications that were not filed with and approved by the superintendent. (See item 4B of this report).
- The Company violated Section 2112(d) of the New York Insurance Law by failing to file notice, with the Superintendent, of the termination of the certificate of appointment of agents within thirty days of such termination. (See item 4A of this report)

## 2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2010, through December 31, 2013. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2013, 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 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 November 8, 1994, and was licensed and commenced business on July 31, 1995. On February 24, 1995, all of the stock was transferred to Security Benefit Group, Inc. ("SBG"), a wholly owned subsidiary of Security Benefit Life Insurance Company ("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. In August 2006, SBG merged with and into the Company's affiliate Security Benefit Corporation ("SBC").

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.

#### 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 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.

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, Security Distributors, Inc. (“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.

#### 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(d) of New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment . . . of any insurance agent licensed in this state, or upon termination for cause . . . 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 . . . .”

The examiner compared the Company's listing of agents terminated during the examination period to the listing of terminated agents shown in the Department's records and noted that the Company did not file a notice with the superintendent of termination of the certificate of appointment within thirty days of such termination for 16 agents.

The Company violated Section 2112(d) of the New York Insurance Law by failing to file notice, with the superintendent, of the termination of the certificate of appointment of agents within thirty days of such termination. A similar violation was included in the prior report on examination.

2. Insurance Regulation No. 60, 11 NYCRR Section 51.6(b) states, in part:

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

(2) Require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and proof of receipt by the applicant of the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’ and the completed ‘Disclosure Statement.’

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

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed 'Disclosure Statement' . . .

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein . . . ”

The examiner reviewed a sample of 58 annuity contracts that were issued during the examination period for compliance with Insurance Regulation No. 60.

I. In three of 58 (5%) replacement contracts reviewed, the Company did not provide proof of receipt by the applicant of the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” (“IMPORTANT Notice”). The Company acknowledged that it processed the application without the IMPORTANT Notice.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(2) by failing to require and maintain proof of receipt by the applicant of the IMPORTANT Notice.

II. In two of 58 (4%) replacement contracts reviewed, the Company failed to provide the required composite comparison presentation section of the Disclosure Statement where more than one contract was being replaced.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(3) by failing to examine and ascertain that a composite Appendix 10B Disclosure Statement was required and to provide such in situations where more than one existing contract was being replaced.

III. Two of 58 (4%) replacement contracts reviewed included incomplete and inaccurate disclosure statement. In another four of 58 (7%) replacement contracts reviewed, the replacement forms received did not include either the important notice or were deficient. For these four replacement transactions reviewed, the examiner noted that (1) in one case the signed IMPORTANT Notice was not obtained, (2) in another case the required sales literature information

form was not submitted with the application, and (3) the required investment instructions were missing in one of the replacement files reviewed. For the one remaining replacement transaction, the incoming fund transfer form was dated prior to the application.

The deficiencies noted in items I, II and III above were not corrected within ten days of receipt of the application and the Company did not reject the application.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(7) by failing to have the deficiencies corrected within ten days of receipt of the application or reject the application and notify the applicant of such rejection for the 6 out of 58 contracts.

IV. In three of 58 replacement contracts reviewed, the Company failed to furnish the existing insurer with a copy of the completed Disclosure Statement used in the sale within ten days of receipt of the application.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b) (4) by failing to furnish the insurer whose coverage was being replaced with a copy of the completed Disclosure Statement within ten days of receipt of the application.

#### B. Underwriting and Policy Forms

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

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

“No Policy form shall be delivered or issued for delivery in this state unless it has been filed and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with the law . . . .”

The examiner reviewed a sample of 60 fixed annuities and 23 variable annuities that were issued during the examination period, and noted that the applications used differed from the applications approved by the Department in one fixed annuity and five variable annuity cases.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using applications that were not filed with and approved by the superintendent.

### 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.

Insurance Regulation No. 152, 11 NYCRR Section 243.2(b) states, in part:

“Except as otherwise required by law or regulation, an insurer shall maintain: . . .  
(4) A claim file for six calendar years after all elements of the claim are resolved and the file is closed or until after the filing of the report on examination in which the claim file was subject to review, whichever is longer. A claim file shall show clearly the inception, handling and disposition of the claim, including the dates that forms and other documents were received . . .”

The examiner reviewed a sample of 23 variable annuity claims and 12 fixed annuity claims that were processed during the examination period. In seven of 35 (20%) annuity claims reviewed (four variable annuity claims and three fixed annuity claims), the claim file did not include the date that the Company was notified of the claim, and the date that the claim form was sent to the beneficiaries. As a result, the examiner was unable to confirm whether the Company provided the claim form to the beneficiaries within 15 business days of receiving notice of the claim.

The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(4) by failing to include in the claim file the date that it was notified of the death, and the date that the claim form was provided to the beneficiaries.

## 5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 86.4(a) of Department Regulation No. 95 by using claim forms which failed to contain required fraud warning Statement.</p> <p>The Company's claim forms contained the required fraud warning statement.</p>
B	<p>The examiner recommended that the Company use its claim forms and that such forms contain the fraud warning statement required by Department Regulation No. 95.</p> <p>The Company's claim forms contained the required fraud warning statement.</p>
C	<p>The Company violated Section 2112(d) of the New York Insurance Law by failing to file notice, with the Superintendent, of the termination of the certificate of appointment of agents within thirty days of such termination.</p> <p>Although the Company has taken steps to improve its process relative to appointment terminations, the examiner's review revealed that the Company did not file a notice with the superintendent of termination of the certificate of appointment within thirty days of such termination for 16 agents. This is a repeat violation. (See item 4A of this report)</p>
D	<p>The examiner recommended that the Company implement procedures to ensure that timely notice of the termination of its agents is filed with the superintendent.</p> <p>The Company has taken steps to improve its process relative to appointment terminations. However, the examiner noted instances where the Company did not timely file a notice with the superintendent of termination of the certificate of appointment of its agents during the examination period. (See item 4A of this report)</p>
E	<p>The Company violated Section 243.2(b)(5) of Department Regulation No. 152 by failing to maintain licensing records that show clearly the date of termination of each licensee.</p> <p>The Company maintained licensing records that showed clearly the date of termination of each licensee.</p>

## 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(d) of the New York Insurance Law by failing to file notice with the superintendent of the termination of the certificate of appointment of agents within thirty days of such termination. This is a repeat violation. (See item 4A of this report)	6
B	The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(2) by failing to require and maintain proof of receipt by the applicant of the Important Notice.	7
C	The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(3) by failing to examine and ascertain that a composite Appendix 10B Disclosure Statement was required and to provide such in situations where more than one existing contract was being replaced.	7
D	The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(7) by failing to have the deficiencies corrected within ten days of receipt of the application or reject the application and notify the applicant of such rejection for the 6 out of 58 contracts.	8
E	The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b) (4) by failing to furnish the insurer whose coverage was being replaced with a copy of the completed Disclosure Statement within ten days of receipt of the application.	8
F	The Company violated Section 3201(b)(1) of the New York Insurance Law by using applications that were not filed with and approved by the superintendent.	8
G	The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(4) by failing to include in the claim file the date that it was notified of the death, and the date that the claim form was provided to the beneficiaries.	9

Respectfully submitted,

\_\_\_\_\_/s/  
Manish Gajiwala  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Manish Gajiwala

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

APPOINTMENT NO. 31264

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:

**MANISH GAJIWALA**

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 7th day of January, 2014

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

