



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
FIDELITY & GUARANTY LIFE INSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2012

DATE OF REPORT:

OCTOBER 31, 2013

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EXAMINER:

HENRY WONG

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Acting Superintendent

April 26, 2016

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

Madam:

In accordance with instructions contained in Appointment No. 30954, dated February 7, 2013, and annexed hereto, an examination has been made into the condition and affairs of Fidelity & Guaranty Life Insurance Company of New York, hereinafter referred to as “the Company,” at its home office located at 445 Park Avenue, New York, NY 10022.

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 violations contained in this report are summarized below:

- The Company violated multiple sections of Insurance Regulation No. 60 by failing to: indicate that sales materials were used in the sale of the proposed policy; (ii) state the surrender charge applying to the replaced contracts in Part D of the Disclosure Statements; (iii) maintain evidence that the Disclosure Statement and sales materials were purportedly sent to the replaced Company; (iv) indicate the date of the Authorization by the applicant or the agent; (v) maintain copies of the Notification of Replacement to the insurer whose life insurance policy or annuity is to be replaced and the replaced Company's response as part of its policy record; (vi) provide composite comparisons when the replacements involved two or more existing contracts being replaced; (vii) state the advantages of continuing the existing contracts in the agent's section of the Disclosure statement; and (ix) provide the external carriers with the information necessary for the completion of the Disclosure Statement with respect to the life insurance policy proposed to be replaced. (See item 7A of this report)
- The Company violated Insurance Regulation No. 33, 11 NYCRR Section 91.4(f)(5) by using premiums, policy counts, assets under management and reserves as the basis for distributing costs among companies and annual statement lines of business within the Company. (See item 3D of this report)
- The Company violated Insurance Regulation No.33, 11 NYCRR Section 91.4(a) by failing to maintain records with sufficient detail to show fully, the system used for the allocation of expenses and the actual bases of the allocation. (See item 3D of this report)
- The company violated Insurance Regulation 34-A, 11 NYCRR Section 219.5(a) by not maintaining at its home office a complete advertising file including the manner and extent of distribution of the advertisements. (See item 7A of this report)
- The Company violated Insurance Regulation No. 95, 11 NYCRR Section 86.4(a) by failing to include the required fraud warning statement in its claim form. (See item 7C of this report)

2. SCOPE OF EXAMINATION

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 three-year period from January 1, 2010 to 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.

During 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.

This examination was coordinated with Maryland as the lead state. The Maryland Insurance Administration (‘MIA’) also conducted a risk focused financial examination of the Company’s parent, Fidelity & Guaranty Life Insurance Company (“F&G Life”) as of December 31, 2012. The examination period for the MIA examination is from January 1, 2010 through December 31, 2012. Since the Company’s information systems and internal controls are the same as its parent, the examiner leveraged the work performed by the MIA examination team in order to avoid duplication of procedures.

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.

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 2012, by the accounting firm of KPMG, LLP. The Company received an unqualified opinion in all years. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination. The Company utilizes its parent's internal audit department as well as a separate internal control department, which was given the task of assessing the internal control structure and compliance with the Sarbanes-Oxley Act of 2002 ("SOX"). Where applicable, SOX workpapers and reports were reviewed and portions were relied upon for this examination

The examiner reviewed the corrective actions taken by the Company with respect to the violations and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 8 of this report.

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 the State of New York on January 23, 1962, under the name of General Economics Life Insurance Company of New York. The Company was licensed and commenced business on November 26, 1962. Initial resources of \$300,000 were provided through the sale of 60,000 shares of common stock (with a par value of \$2 each) for \$5 per share. The Company changed its name to Thomas Jefferson Life Insurance Company on January 21, 1965.

In August 1969, the Company became a wholly owned subsidiary of F&G Life, which in turn was wholly owned by United States Fidelity and Guaranty Company (“USF&G”), an underwriter of multiple lines of property and casualty insurance.

On October 1, 1981, USF&G became a subsidiary of United States Fidelity and Guaranty Corporation (“USF&G Corporation”), a newly formed holding company.

On January 19, 1998, The St. Paul Companies, Inc. (“St. Paul”) and USF&G Corporation entered into an agreement and plan of merger whereby St. Paul acquired USF&G Corporation through a stock exchange in which each share of USF&G Corporation stock was converted into 0.2821 of a share of St. Paul stock.

On September 28, 2001, F&G Life and its subsidiaries were purchased by Old Mutual U.S. Life Holdings, Inc. (“OMUSLH”), a wholly owned subsidiary of Old Mutual U.S. Holdings, Inc. (“OMUSH”), which in turn is a wholly owned subsidiary of Old Mutual plc of London, England (“OM”). The Company received a surplus contribution of \$15 million from its parent, F&G Life, prior to the acquisition by OM. The Company changed its name to Fidelity and Guaranty Life Insurance Company of New York on March 28, 2002.

On January 1, 2007, F&G Life changed its name to OM Financial Life Insurance Company (“OMFLIC”), and the Company changed its name to OM Financial Life Insurance Company of New York.

On December 28, 2009, the Company received a capital contribution of \$10 million from OMFLIC.

On August 6, 2010, OM announced that it had entered into an agreement with Harbinger Capital Partners to sell its US Life operations, including the Company and its parent, OMFLIC.

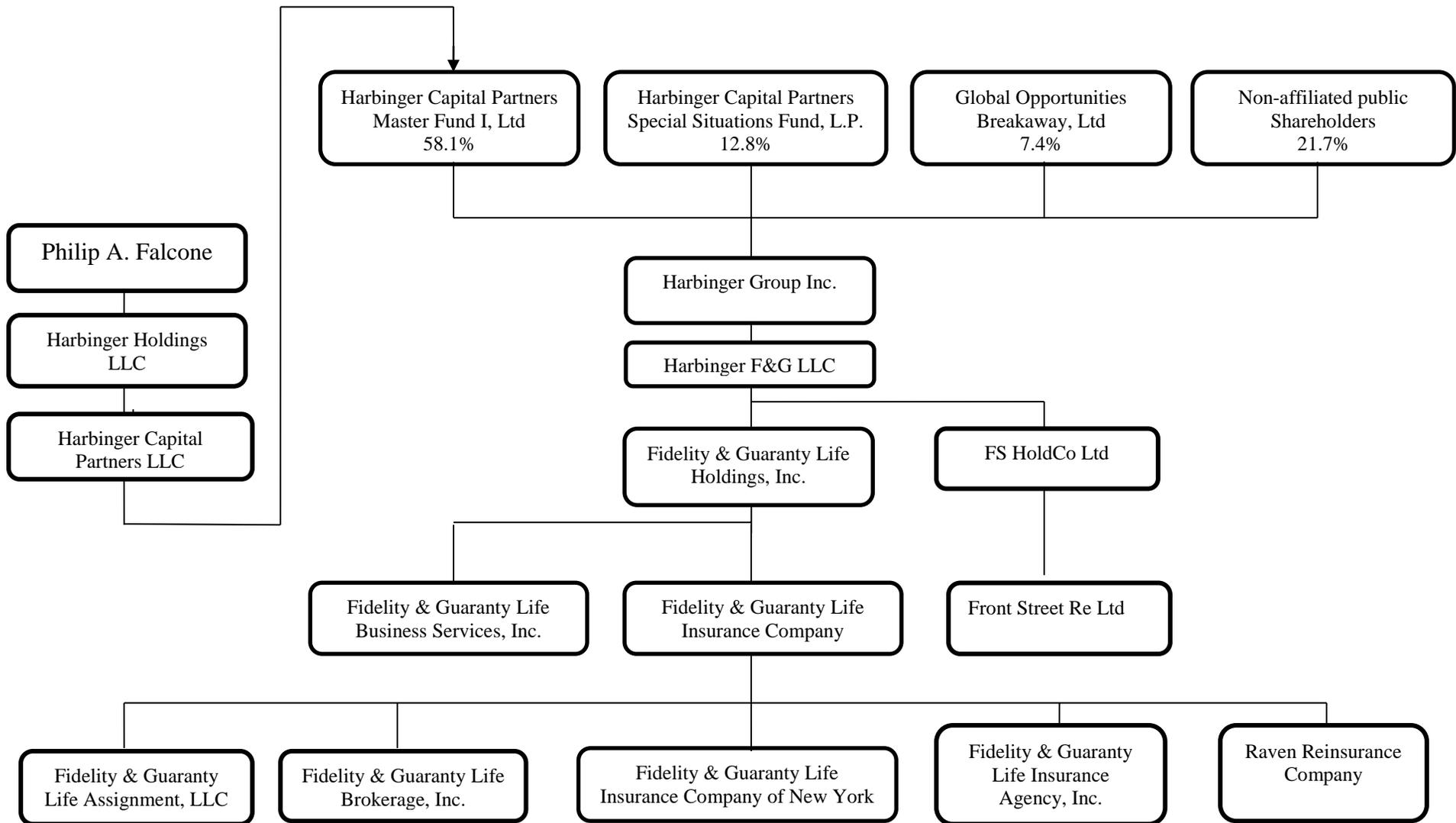
The transaction was approved by the Department on April 1, 2011. On April 6, 2011, Harbinger Group Inc. acquired OMUSLH and its subsidiaries from OM through a stock purchase agreement. The Company's present name Fidelity & Guaranty Life Insurance Company of New York was adopted on April 11, 2011.

B. Holding Company

The Company is a wholly owned subsidiary of F&G Life, a Maryland domiciled life insurance company. F&G Life is in turn a wholly owned subsidiary of Fidelity & Guaranty Life Holdings, Inc., a Delaware holding company. The ultimate parent of the Company is Harbinger Capital Partners Master Fund 1, Ltd., an equity hedge fund.

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 two 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 |
|---|--------------------------|--|----------------------------|---|--|
| Management Services Agreement Department File No. 29826 Amendment Department File No. 29826A | 11/01/01 05/01/03 | Fidelity & Guaranty Life Business Services, Inc. ("FGLBS") | The Company | Administrative Support Services | 2010 \$(901,345) 2011 \$(1,202,136) 2012 \$(992,342) |
| Investment Management Agreement Department File No. 42818 | 01/01/10 | Barrow, Hanley MeWhinney and Strauss** | The Company | Investment Management and Advisory Services | 2010 \$(316,270) 2011 \$(74,833) |

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

** As of April 6, 2011, Barrow Hanley MeWhinney and Strauss is no longer an affiliate of the Company.

The Company participates in a federal income tax allocation agreement with its parent.

Insurance Regulation No. 33, 11 NYCRR Section 91.4(f)(5) states:

“General indexes such as premium volume, number of policies, and insurance in force shall not be used as basis for distributing costs among major annual statement lines of business, except where the incidence of cost is closely related to such general indexes, or except where there is no more appropriate basis for measurement. Such general indexes may not be used in distributing claim costs to secondary annual statement lines of business.”

A review of the records maintained by the Company supporting the charges and fees under the inter-company service agreement between the Company and FGLBS indicated that general indices such as annual premium equivalencies (“APE”), policy counts, assets under management (“AUM”) and reserves were used as the basis to allocate functional department

expenses between the insurance companies (the Company and F&G Life) within the agreement with FGLBS. The review also noted that, the Company used APE, policy counts, AUM and reserves to allocate its expenses for each line of business within the Company.

The Company violated Insurance Regulation No.33, 11 NYCRR Section 91.4(f)(5) by using premiums, policy counts, AUM and reserves as the basis for distributing costs among companies and annual statement lines of business within the Company.

Insurance Regulation No. 33, 11 NYCRR Section 91.4 states, in part:

“(a) General instructions. . . .

(2) Each life insurer shall maintain records with sufficient detail to show fully:

(i) the system actually used for allocation of income and expenses;

(ii) the actual bases of allocation;

(iii) the actual monetary distribution of the respective items of income, salaries, wages, expenses, and taxes to . . .

(d) companies . . .

(3) Such records shall be classified and indexed in such form as to permit ready identification between the item allocated and the basis upon which it was allocated, and shall be maintained in such a manner as to be readily accessible for examination . . .

(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.”

The Company indicated in correspondence with the examiner that it used policy counts and reserve amounts to allocate expenses between F&G Life and the Company and annual statement lines of business within the Company. However, the Company failed to provide supporting documentation demonstrating how policy counts and reserve amounts were used to allocate expenses between the companies and lines of business.

The Company violated Insurance Regulation No. 33, 11 NYCRR Section 91.4(a) by failing to maintain records with sufficient detail to show fully the system actually used for the allocation of expenses and the actual bases of the allocation.

Section 1505(d)(3) 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 such shorter period as he may permit, and he has not disapproved it within such period . . .

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

A review of the documentation provided by the Company related to inter-company service agreements indicated that the investment service agreement between Harrow Hanley McWhinney and Strauss, LLC and the Company was terminated in 2011. Subsequently, Goldman Sachs Asset Management assumed responsibility for much of the Company’s investment portfolio management beginning on April 6, 2011. Beginning in October, 2011, a significant portion of the investment management function was assumed by FGLBS. The review of the filed Management Services Agreement, dated November 1, 2001 and amended May 1, 2003, between the Company and FGLBS revealed that investment management services were not included in the service agreement.

The Company violated Section 1505(d)(3) of the New York Insurance Law by having FGLBS manage its investment function without notifying the Superintendent in writing of its intention to enter into such transaction at least 30 days prior thereto.

E. Management

The Company’s by-laws provide that the board of directors shall be comprised of not less than 7 and not more than 21 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 31, 2012, the board of directors consisted of nine members. Meetings of the board are held quarterly.

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> |
|-------------------------------|---------------------------------------|---------------------------|
| Omar M. Asali New York, NY | President Harbinger Group Inc. | 2011 |

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> | <u>Year First Elected</u> |
|---|---|---------------------------|
| Fred L. Cohen* Maplewood, NJ | Semi-Retired, Managing Director Perception Advisor, Inc. | 2011 |
| Ian W. Estus Larchmont, NY | Managing Director Harbinger Capital Partners LLC | 2011 |
| Philip J. Gass Stamford, CT | Vice President Harbinger Group Inc. | 2011 |
| Kevin J. Gregson* Chappaqua, NY | Management Consultant Alvarez and Marsal Business Consulting | 2011 |
| Keith M. Hladek Cortlandt Manor, NY | Chief Financial Officer and Chief Operating Officer Harbinger Capital Partners LLC | 2011 |
| Leland C. Launer, Jr. New Providence, NJ | President and Chief Executive Officer Fidelity & Guaranty Life Insurance Company of New York | 2011 |
| William P. Melchionni* Naples, FL | Independent Consultant Self – employed | 2011 |
| Lemuel J. Tweedie Far Hills, NJ | Chairman Front Street Re Ltd | 2011 |

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

In June 2013, Fred L. Cohen and Ian W. Estus resigned from the board and were replaced by William Bawden and Thomas Williams. On September 27, 2013, Keith M. Hladek resigned from the board.

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that one of the directors did not attend a majority of the meetings during the examination period. Mr. Asali did not attend seven of the ten board meetings held between August 3, 2011 and January 29, 2013.

Members of the board have a fiduciary responsibility and must demonstrate an ongoing interest in the affairs of the Company. It is essential that directors attend meetings consistently and express their views on relevant matters so that, appropriate decisions may be reached by the board. Individuals who fail to attend regular meetings do not fulfill such criteria.

The examiner recommends that all board members attend scheduled board meetings on a regular basis.

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

| <u>Name</u> | <u>Title</u> |
|------------------------|--|
| Leland C. Launer, Jr. | President and Chief Executive Officer |
| Rajesh Krishnan | Executive Vice President and Chief Investment Officer |
| Barry G. Ward | Executive Vice President and Chief Financial Officer |
| John P. O'Shaughnessy | Senior Vice President, Chief Actuary, Chief Risk Officer and Illustration Actuary |
| Christopher S. Fleming | Senior Vice President, Operations and IT |
| Eric L. Marhoun | Senior Vice President, General Counsel and Secretary |
| John A. Phelps II | Senior Vice President and Chief Distribution Officer |
| George C. Nicholson | Vice President and Controller |
| Russell Laws* | Vice-President, Client Services and Claims |
| Martin E. Uhl, Jr | Assistant Vice President and Appointed Actuary |
| Claire M. Smith | Assistant Vice President and Treasurer |

* Designated consumer services officer per Insurance Regulation No. 64, 11 NYCRR Section 216.4(c)

On May 6, 2013, George C. Nicholson and Barry G. Ward resigned from the Company, and were replaced by Christine Schmitt as Vice President and Controller and Wendy Young as Vice President and Chief Financial Officer.

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 only licensed to transact business in New York. In 2012, 100% of life premiums and annuity considerations 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 \$375,000 (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 writes individual life and annuity products through independent agents, managing general agents and specialty brokers. Premium income was comprised of 92.5% ordinary annuities and 7.5% individual life. All annuity contracts issued were fixed index annuities. The Company did not issue any life policies during the examination period.

C. Reinsurance

As of December 31, 2012, the Company had reinsurance treaties in effect with eight companies, of which seven were authorized or accredited. The Company's life business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$100,000. The total face amount of life insurance ceded as of December 31, 2012, was \$307,754,030, which represents 55% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$424,289 was supported by funds withheld.

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:

| | <u>December 31,</u> <u>2009</u> | <u>December 31,</u> <u>2012</u> | <u>Increase</u> <u>(Decrease)</u> |
|---|------------------------------------|------------------------------------|--------------------------------------|
| Admitted assets | <u>\$461,819,565</u> | <u>\$472,682,394</u> | <u>\$10,862,829</u> |
| Liabilities | <u>\$422,448,611</u> | <u>\$431,575,253</u> | <u>\$ 9,126,642</u> |
| Common capital stock | \$ 440,000 | \$ 440,000 | \$ 0 |
| Gross paid in and contributed surplus | 36,241,340 | 36,241,340 | 0 |
| Additional admitted deferred tax asset pursuant to SSAP 10R, paragraph 10.e | 568,380 | 0 | (568,380) |
| Unassigned funds (surplus) | <u>2,121,234</u> | <u>4,425,801</u> | <u>2,304,567</u> |
| Total capital and surplus | <u>\$ 39,370,954</u> | <u>\$ 41,107,141</u> | <u>\$ 1,736,187</u> |
| Total liabilities, capital and surplus | <u>\$461,819,565</u> | <u>\$472,682,394</u> | <u>\$10,862,829</u> |

The Company's invested assets as of December 31, 2012 were mainly comprised of bonds (85.4%) and short-term investments (12.0%). The majority (94.4%) of the Company's bond portfolio, as of December 31, 2012, 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> |
| Outstanding, end of previous year | 6,648 | 6,490 | 6,182 |
| Issued during the year | 535 | 82 | 159 |
| Other net changes during the year | <u>(693)</u> | <u>(390)</u> | <u>(351)</u> |
| Outstanding, end of current year | <u>6490</u> | <u>6,182</u> | <u>5,990</u> |

The decrease in ordinary annuities issued in 2011 as compared to 2010 was primarily due to lower sales of deferred and fixed indexed annuity products in 2011. As the interest rate environment steadily dropped after 2010, the Company reduced its offering rates which resulted in lower sales.

The increase in ordinary annuities issued in 2012 as compared to 2011 was primarily attributable to the exit of a competitor from the fixed indexed annuity market which increased demand for the Company's fixed indexed annuity products and resulted in an increase in sales of these products.

The fluctuation in other net annuity changes in 2010 as compared to 2011 and 2012 is primarily a result of more policies reaching the end of the interest rate guarantee period and surrendering in 2010. In addition, competitors pulled back on product offerings in the latter half of 2011 which helped improve retention of the fixed indexed annuity business. Also, more policyholders were approaching the age of 90 during 2010, which resulted in a higher level of annuitizations in 2010 as compared to 2011 and 2012.

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> |
|-------------------------|--------------------|--------------------|--------------------|
| Ordinary: | | | |
| Life insurance | \$ 604,349 | \$1,235,159 | \$1,570,665 |
| Individual annuities | 2,476,304 | 4,005,758 | (650,966) |
| Supplementary contracts | <u>533,589</u> | <u>256,630</u> | <u>110,969</u> |
| Total ordinary | <u>\$3,614,242</u> | <u>\$5,497,547</u> | <u>\$1,030,668</u> |
| Group life insurance | \$ <u>4,630</u> | \$ <u>7,224</u> | \$ <u>5,858</u> |
| Total | <u>\$3,618,872</u> | <u>\$5,504,771</u> | <u>\$1,036,526</u> |

The increase in net operating gain for the life insurance in 2011 as compared to 2010 is primarily a result of the federal income tax benefit recognized in 2011 as compared to federal income tax expense recognized in 2010 and a lower level of disability and surrender benefits in 2011.

The increase in net operating gain for the life insurance in 2012 as compared to 2011 is primarily due to favorable mortality experience and a lower level of commissions, general expenses and taxes, licenses and fees partially offset by the lower level of net investment income earned in 2012.

The increase in net gain for the individual annuities in 2011 as compared to 2010 is primarily a result of the federal income tax benefit recognized in 2011 as compared to federal income tax expense recognized in 2010.

The net operating loss for the individual annuities in 2012 as compared to a net operating gain in 2011 is primarily due to the lower level of net investment income earned in 2012. The decrease in investment income is primarily due to a lower yield on the investment portfolio as a result of lower reinvestment rates, higher cash and short term investment holdings throughout 2012, and a decline in achievable yields due to lower interest rates compared to 2011.

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 KPMG, LLP was retained by the Company to audit the Company's combined statutory basis statements of financial position as of December 31st 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.

KPMG, 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 | \$397,477,686 |
| Stocks: | |
| Preferred stocks | 4,452,103 |
| Cash, cash equivalents and short term investments | 55,840,590 |
| Contract loans | 1,727,840 |
| Derivatives | 1,236,986 |
| Other invested assets | 4,739,616 |
| Receivable for securities | 67,043 |
| Investment income due and accrued | 5,017,226 |
| Premiums and considerations: | |
| Uncollected premiums and agents' balances in the course of collection | (103,270) |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 309,800 |
| Reinsurance: | |
| Other amounts receivable under reinsurance contracts | 10,362 |
| Current federal and foreign income tax recoverable and interest thereon | 419,985 |
| Net deferred tax asset | 1,483,774 |
| Receivables from parent, subsidiaries and affiliates | <u>2,653</u> |
| Total admitted assets | <u>\$472,682,394</u> |

C. Liabilities, Capital and Surplus

| | |
|---|--------------------------|
| Aggregate reserve for life policies and contracts | \$378,295,815 |
| Liability for deposit-type contracts | 37,003,718 |
| Contract claims: | |
| Life | 715,931 |
| Policyholders' dividends and coupons due and unpaid | 218 |
| Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts | |
| Dividends apportioned for payment | 3,142 |
| Dividends not yet apportioned | 6,886 |
| Premiums and annuity considerations for life and accident and health contracts received in advance | 45,541 |
| Contract liabilities not included elsewhere: | |
| Interest maintenance reserve | 8,984,355 |
| Commissions to agents due or accrued | 26,071 |
| General expenses due or accrued | 17,376 |
| Taxes, licenses and fees due or accrued, excluding federal income taxes | 774,264 |
| Amounts withheld or retained by company as agent or trustee | 2,953 |
| Remittances and items not allocated | 2,585,027 |
| Miscellaneous liabilities: | |
| Asset valuation reserve | 1,192,397 |
| Funds held under reinsurance treaties with unauthorized reinsurers | 540,000 |
| Payable to parent, subsidiaries and affiliates | 201,851 |
| Unpresented drafts pending escheatment | 1,179,708 |
| Total liabilities | <u>\$431,575,253</u> |
| Common capital stock | \$440,000 |
| Gross paid in and contributed surplus | 36,241,340 |
| Unassigned funds (surplus) | <u>4,425,801</u> |
| Surplus | <u>\$ 40,667,141</u> |
| Total capital and surplus | <u>\$ 41,107,141</u> |
| Total liabilities, capital and surplus | <u>\$472,682,394</u> |

D. Condensed Summary of Operations

| | <u>2010</u> | <u>2011</u> | <u>2012</u> |
|--|-------------------------|-------------------------|-------------------------|
| Premiums and considerations | \$36,838,814 | \$ 9,727,676 | \$19,188,735 |
| Investment income | 27,993,350 | 27,461,691 | 21,376,172 |
| Commissions and reserve adjustments on reinsurance ceded | 117,568 | 119,125 | 110,504 |
| Miscellaneous income | <u>175</u> | <u>263</u> | <u>50</u> |
| Total income | <u>\$64,949,907</u> | <u>\$37,308,755</u> | <u>\$40,675,461</u> |
| Benefit payments | \$48,294,969 | \$35,671,392 | \$34,726,721 |
| Increase in reserves | 7,660,418 | (6,137,127) | 2,357,242 |
| Commissions | 1,575,683 | 491,071 | 1,098,192 |
| General expenses and taxes | 1,748,627 | 1,849,603 | 1,516,464 |
| Increase in loading on deferred and uncollected premium | (45,160) | 3,075 | (24,228) |
| Miscellaneous deductions | <u>1,027</u> | <u>4,345</u> | <u>3,708</u> |
| Total deductions | <u>\$59,235,564</u> | <u>\$31,882,359</u> | <u>\$39,678,099</u> |
| Net gain (loss) | \$ 5,714,343 | \$ 5,426,396 | \$ 997,362 |
| Dividends | 9,430 | 11,614 | 9,809 |
| Federal and foreign income taxes incurred | <u>2,086,040</u> | <u>(89,989)</u> | <u>(48,972)</u> |
| Net gain (loss) from operations before net realized capital gains | \$ 3,618,873 | \$ 5,504,771 | \$ 1,036,525 |
| Net realized capital gains (losses) | <u>(2,737,220)</u> | <u>(964,528)</u> | <u>(491)</u> |
| Net income | <u>\$ 881,653</u> | <u>\$ 4,540,243</u> | <u>\$ 1,036,034</u> |

The decrease in premiums and annuity considerations in 2011 as compared to 2010 is primarily due to lower sales of deferred and fixed indexed annuity products in 2011. As the interest rate environment steadily dropped from 2010, the Company reduced its offering rates which resulted in lower sales.

The increase in premiums and annuity considerations in 2012 as compared to 2011 is primarily attributable to the exit of a competitor from the fixed indexed annuity market, which

increased demand for the Company's fixed indexed annuity products and resulted in an increase in sales of these products.

The decrease of benefit payments in 2011 as compared to 2010 is primarily a result of more policies reaching the end of the interest rate guarantee period and surrendering in 2010. In addition, competitors pulled back on product offerings in the latter half of 2011 which helped improve retention of the fixed indexed annuity business. Also, more policyholders were approaching the age of 90 during 2010 which resulted in a higher level of annuitization benefits in 2010 as compared to 2011.

The decrease in the change in reserves in 2011 as compared to 2010 is primarily due to the lower level of sales of deferred annuity and fixed indexed annuity products in 2011 partially offset by the lower level of annuitization and surrender benefits in 2011 as compared to 2010.

The increase in the change in reserves in 2012 as compared to 2011 is primarily due to the higher level of sales of fixed indexed annuity products in 2012.

The significant fluctuation of commissions in 2011 as compared to 2010 and 2012 is primarily due to the lower level of premium and annuity considerations in 2011.

The significant decrease in federal income taxes incurred is due to a decrease in taxable income and a tax sharing benefit in 2011 due to utilization of the Company's capital losses in the consolidated tax return. The Company was reimbursed by its parent, F&G Life, for the utilization of its capital losses. Taxable income decreased in 2011 primarily as a result of net unrealized losses on equity call options in 2011 and a decrease to pre-tax statutory operating income.

The fluctuation in net realized capital losses during the examination period is due to the Company recognizing impairment losses of \$2.3 million, \$1.7 million and \$0.4 million in 2010, 2011 and 2012, respectively.

E. Capital and Surplus Account

| | <u>2010</u> | <u>2011</u> | <u>2012</u> |
|--|---------------------|---------------------|---------------------|
| Capital and surplus, December 31, prior year | <u>\$39,370,954</u> | <u>\$41,883,487</u> | <u>\$44,656,586</u> |
| Net income | \$ 881,653 | \$ 4,540,243 | \$ 1,036,034 |
| Change in net unrealized capital gains (losses) | 1,764,242 | (1,926,297) | 543,718 |
| Change in net deferred income tax | 582,496 | 113,403 | (756,693) |
| Change in non-admitted assets and related items | (781,293) | 165,113 | 966,112 |
| Change in asset valuation reserve | 0 | (253,779) | (938,618) |
| Cumulative effect of changes in accounting Principles | 0 | 0 | 768,231 |
| Dividends to stockholders | 0 | 0 | (4,400,000) |
| Aggregate write ins for gains and losses in surplus | <u>65,435</u> | <u>134,416</u> | <u>(768,231)</u> |
| Net change in capital and surplus for the year | <u>\$ 2,512,533</u> | <u>\$ 2,773,099</u> | <u>(3,549,447)</u> |
| Capital and surplus, December 31, current year | <u>\$41,883,487</u> | <u>\$44,656,586</u> | <u>\$41,107,139</u> |

The significant fluctuation in change in net unrealized capital loss during the examination period is due to recognized gains (losses) on the equity call options. It was a \$1.9 million loss and \$0.5 million gain for 2011 and 2012, respectively.

The decrease in change in net deferred income tax in 2011 as compared to 2010 is primarily due to book/tax difference for investments and accrued expenses and a decrease in the tax-basis deferred policy acquisition expenses due to the decrease in sales during 2011, partially offset by book/tax differences in reserves.

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.

Section 1313(f) of the New York Insurance Law states, in part:

“Advertisements and other public announcements directed primarily at calling the attention of the policyholder or prospective policy holder to an insurer and contain a statement of the separate financial condition of the holding company shall also contain a statement of the separate financial conditions of the insurer . . . ”

Based on the review of the Company's advertisement files, three advertisements contained a chart "Financial & Business Highlights" that illustrates the financial condition of the parent company, F&G Life, but do not present separately the financial conditions of the Company.

The Company violated Section 1313(f) of the New York Insurance Law by providing policyholders and prospective policyholders advertisements illustrating the financial condition of the parent company without separately illustrating the financial condition of the insurer.

Insurance Regulation No. 34-A, 11 NYCRR Section 219.5(a) states:

“Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. In order to be complete, the file must contain all advertisements whether used by the company, its agents or solicitors or other persons. That portion of the advertising file which has been covered by a filed report on examination may be eliminated.”

The examiner's review of the Company's advertising files revealed that the Company failed to maintain six advertisements at its home office. In addition, the manner and extent of

distribution was not maintained for the advertisements maintained in the Company's home office. The Company ultimately provided the manner and extent of distribution when requested by the examiner. However, the Company's agents can download advertisements through a sales link from an agent portal and the Company does not track the number of advertising downloads that are ultimately distributed to the public.

The Company violated Insurance Regulation 34-A, 11 NYCRR Section 219.5(a) by not maintaining certain advertisements at its home office, and by failing to track the extent of distribution of advertisements distributed to the public in all cases.

Insurance Regulation No. 60, 11 NYCRR Section 51.6 states, in part:

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

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

(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 50 replaced annuity contracts. The following was noted as a result of the review:

In several instances, the Disclosure Statement was either incomplete or contained inaccuracies as follows:

- a. In 19 of the 50 (38%) replacement contracts reviewed, no supporting documentation was found in the file to verify the proposed contract information in the Summary Result Comparison Section of the Disclosure Statement.
- b. In 34 of the 50 (68%) replacement contracts reviewed, the Disclosure Statement inaccurately indicated that no sales material was used in the sale of the proposed policy.

However, the confirmation letter indicated that a brochure was used in the sale of the proposed policy.

c. In seven of the 50 (14%) replacements, Part D of the Disclosure Statements did not state the surrender charge applicable to the replaced contracts. Instead, the agent stated that there were no surrender charges.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(3) by failing to examine and ascertain that the Disclosure Statements, completed by its agents and submitted with policy applications during the examination period, were accurate and complete.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(7) by failing to either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor within ten days from the date of receipt of the application.

Insurance Regulation No. 60, 11 NYCRR Section 51.6 states, in part:

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

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

The following discrepancies were observed in regard to the disclosure statement and sales materials sent to the replaced Company:

a. In 27 of the 50 (54%) replacement contracts reviewed, there was no evidence that the Disclosure Statement and sales materials were sent to the replaced Company.

b. In 23 of the 50 (46%) replacement contracts reviewed, the Company provided a cover letter as evidence of the completed Disclosure Statement being sent to the replaced Company. The cover letter stated that a replacement form was enclosed. The examiner cannot determine by that statement whether Disclosure Statement and sales materials were sent to the replaced Company.

c. In four of the 23 (8%) replacement contracts where the Company provided a cover letter as evidence of the completed Disclosure Statement being sent to the replaced Company, the Company failed to furnish the insurer whose coverage was being replaced with a copy of the

sales material used in the sale of the proposed life insurance policy, and the completed Disclosure Statement 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 to the insurer whose coverage was 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 within ten days of receipt of the application.

Insurance Regulation No. 60, 11 NYCRR Section 51.7(b) states:

“No insurer, agent, broker, representative, officer, or employee of an insurer or any other licensee of this Department shall fail to comply with or engage in other practices that would prevent the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contract holders. Any person failing to comply with this Part, or engaging in other practices that would prevent the orderly working of this Part, shall be subject to penalties under the Insurance Law of the State of New York, which may include, but shall not be limited to, monetary restitution, restoration of policies or contracts, removal of directors or officers, suspension or revocation of agent's, broker's or company's licenses and monetary fines.”

In 44 of the 50 (88%) annuity replacements reviewed, the Authorization was not dated by the applicant or the agent. In 13 of the 44 cases, the examiner could not find those contracts in the Company's tracking database. For those contracts, the examiner could not ascertain the initiation of the replacement process.

In 16 of the 50 (32%) replacement contracts reviewed, the definition of replacement was signed the same date as the application. The examiner could not ascertain a timeline as to the initiation of the replacement process.

The Company violated Insurance Regulation No.60, 11 NYCRR Section 51.7(b) when it failed to comply with the orderly working of this part in accomplishing its intended purpose in the protection of policyholders and contract holders.

Insurance Regulation No. 60, 11 NYCRR Section 51.6 states, in part:

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

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract; proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts;" the signed and completed "Disclosure Statement;" and the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced indexed by agent and broker, for six calendar . . .”

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

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

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

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

(8) Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review.”

The following discrepancies were noted during review of the authorization forms and replacement Company’s response:

- a. In 44 of the 50 (88%) replacement contracts reviewed, a copy of the notification of replacement sent to replaced company to request existing contract information was not included in the file.
- b. In three of the 50 (6%) replacement contracts reviewed, the replaced Company's response regarding existing contract information was not included in the file.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6 (b)(6) by failing to maintain copies of the notification of replacement to the insurer whose life insurance policy or annuity was to be replaced. The Company also violated Insurance Regulation No. 152, 11 NYCRR Section 243.2 by failing to maintain copies of the replacement notices sent to the replaced insurers, copies of the authorization form and the replaced insurer’s response as part of

its policy records, so that the examiner could reconstruct the solicitation and underwriting of the contract or policy.

Insurance Regulation No.60, 11 NYCRR Section 51.5 states, in part:

“Each agent and broker shall . . .

(c) Where a replacement has occurred or is likely to occur . . .

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

In two of the 50 (4%) replacement contracts reviewed, Disclosure Statement was signed after the date that the annuity application was signed.

The Company violated Insurance Regulation No.60, 11 NYCRR Section 51.5(c)(3) by presenting to the applicant "Disclosure Statement" signed by the agent or broker, after the application was signed.

The instructions for completing Disclosure Statements, regarding replacement transactions involving multiple policies are contained in Appendix 10B of Insurance Regulation No. 60, 11 NYCRR Section 51.8 which states, in part:

“If more than three existing annuity contracts are to be affected by this transaction or if more than one new annuity contract is proposed, the first page of this Disclosure Statement must be completed for such additional annuity contracts. In addition, a composite comparison shall be completed for all existing life insurance policies or annuity contracts to all proposed life insurance policies or annuity contracts . . .”

The examiner reviewed 11 replacements which involved two or more existing contract being replaced. The following discrepancies were noted during the review:

Two of the 11 (18%) contracts reviewed involved two or more contracts being replaced; a composite comparison was not completed as part of the Disclosure Statement.

The Company violated Insurance Regulation No.60, 11 NYCRR Section 51.8 by failing to complete a composite Disclosure Statement in situations involving multiple policies or contracts.

Insurance Regulation No. 60, 11 NYCRR Section 51.7 states, in part:

“(a) No insurer, agent or broker shall:

(1) make or give any deceptive or misleading information in the "Disclosure Statement" or in any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract . . .”

In four of 50 (8%) replacement contracts reviewed, the agent stated “None” as the advantage of continuing the existing contracts in the agent section of the Disclosure Statement. During the review of the Disclosure Statements, the examiner noted that advantages of continuing the existing contracts included shorter period for surrender charges, lower or zero amount of surrender charges, and guaranteed higher surrender value than the proposed replaced contract. Based on the review, the examiner determined that the agents misstated the advantage of continuing the existing contracts by stating “None” in the Disclosure Statement for these contracts.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.7(a)(1) by providing misleading information in the Disclosure Statement.

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

“Where a replacement has occurred or is likely to occur, the insurer whose life insurance policy contract is to be replaced shall . . .”

(2) Within twenty days of receipt of a request from a licensee of the Department, for information necessary for completion of the “Disclosure Statement” with respect to the life insurance policy or annuity contract proposed to be replaced, together with proper authorization from the applicant, furnish the required information simultaneously to the agent of record of the existing life insurance policy or annuity contract being replaced and the agent and insurer replacing the life insurance policy or annuity contract. This information shall include the insurer's customer service telephone number, the current status of the existing life insurance policy or annuity contract and the currently illustrated dividends/interest and other non-guaranteed costs and benefits.”

The review of the 41 outgoing replacement files revealed the following:

In 11 out of the 41 (26.8%) outgoing replacement files, the Company failed to provide the external carriers with the information necessary for the completion of the Disclosure Statement with respect to the life insurance policy proposed to be replaced. In one out of the 41

(2.43%) outgoing replacement files, the Company failed to provide the external carriers with the information necessary to complete the Disclosure Statement with respect to the life insurance policy proposed to be replaced within twenty days of receipt of the request. It took the Company 56 days to provide information to the external carrier after receipt of the request.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(c)(2) by failing to provide the external carriers with the information necessary for the completion of the Disclosure Statement with respect to the life insurance policy proposed to be replaced.

The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted above and provide relief to all policy and contract holders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts.

The examiner also recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Insurance Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee.

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

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

“All applications for commercial insurance, individual, group or blanket accident and health insurance and all claim forms . . . shall contain a notice in a form approved by the superintendent that clearly states in substance the following:

“Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance

act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.”

Pursuant to Section 403(d) of the New York Insurance Law, the Superintendent promulgated Insurance Regulation No. 95, 11 NYCRR Section 86.4 which states, in part:

“(a) . . . all claim forms for insurance, and all applications for commercial insurance and accident and health insurance, provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement:

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

The examiner reviewed 15 of 139 life policy death claims, and 15 of 298 annuity death claims during the examination period. In 11 of 15 (73.3%) life cases and 14 of 15 (93.3%) annuity cases, the company used a claim form that did not contain the required fraud warning statement.

The examiner noted that the Company modified its claim form to contain the required fraud warning statement on January 7, 2011 as a result of the prior examination review. However, the review of the sampled claims paid after the corrected claim form was adopted revealed that nine out of 10 (90.0%) annuity cases and ten out of 11 (90.1%) cases still did not contain the required fraud warning statement. Although the newly adopted claim form was available, the improper claim form continued to be utilized.

The Company violated Section 403(d) of the New York Insurance Law and Insurance Regulation No. 95, 11 NYCRR Section 86.4(a) by failing to include the required fraud warning statement on its claim form.

Section 3214(c) of the New York Insurance Law states:

“If no action has been commenced, interest upon the principal sum paid to the beneficiary or policy holder shall be computed daily at the rate of interest currently paid by the insurer on proceeds left under the interest settlement option from the date of death of an insured or annuitant in connection with a death claim on such a policy of life insurance or contract of annuity and from the date of maturity of an endowment contract to the date of payment and shall be added to and be a part of the total sum paid.”

In two of 15 (13.3%) annuity death claims reviewed, the company failed to pay the required interest on the proceeds from the date of death of the annuitant to the date of payment due to system error.

The Company violated Section 3214(c) of the New York Insurance Law by failing to pay the required interest on the proceeds from the date of death of the annuitant to the date of payment.

D. Anti-Money Laundering Program

The company's Anti-Money Laundering Program (“AML”) program requires the Company to conduct an annual independent audit to review and test aspects of the implementation and operation of the program. The independent audit ensures that the AML policies and procedures are adequate and effective; that suspicious transactions are identified properly, referred and reported timely; and finally, recommendations to address deficiencies for this program are implemented; if identified and required.

Based on the review, the Company did not perform any independent test during the examination period as required by the Company's AML program.

The examiner recommends that the Company performs independent test annually as the AML program required.

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

“(a) In addition to any other requirement contained in Insurance Law Section 325, any other Section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain its claims, rating, underwriting . . . records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part.

(b) Except as otherwise required by law or regulation, an insurer shall maintain:

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

(2) An application where no policy or contract was issued for six calendar years or until after the filing of the report on examination in which the record was subject to review, whichever is longer.

(3) A record required under Section 218.7 of this Title for six years after the required report is filed or, if the filing requirement is waived, for six years after the report would have been filed.

(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. . . .

(7) A financial record necessary to verify the financial condition of an insurer, including ledgers, journals, trial balances, annual and quarterly statement work papers, evidence of asset ownership, and source documents, for six calendar years from its creation or until after the filing of the report on examination in which the record was subject to review, whichever is longer. . . .”

The review of the company’s record retention policy revealed that the Company does not require records to be maintained for either six years or until after the examination in which the record would have been subject to review, whichever is later. The record retention periods in the Company’s policy would suffice except in a case where the report on examination is being disputed for a period greater than seven years.

The examiner recommends that the Company modify its record retention policy to comply with Insurance Regulation No. 152 in all instances.

8. 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 1505(d)(3) by failing to notify the superintendent in writing of its intention to enter into a lease agreement and a service agreement with an affiliate.</p> <p>A similar violation appears in this report. (See section 9, item C of this report.)</p> |
| B | <p>The Company violated Section 1505(d)(3) of the New York Insurance Law by failing to comply with its approved service agreement.</p> <p>A similar violation appears in this report. (See section 9, item C of this report.)</p> |
| C | <p>The Company violated Section 325(a) of the New York Insurance Law by failing to maintain its by-laws, restated charter, board and committee minutes and a copy of the records constituting the Company's books of account at its principal office in New York.</p> <p>The examiner's review did not reveal instances whereby the Company violated Section 325(a) of the New York Insurance Law.</p> |
| D | <p>The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation during the examination period according to schedules of agent compensation that were never filed with the Department.</p> <p>The examiner's review did not reveal instances whereby the Company violated Section 4228(f)(1)(A) of the New York Insurance Law.</p> |
| E | <p>The Company violated Section 4228(h) of the New York Insurance Law by failing to provide a demonstration of self-support signed by a qualified actuary.</p> <p>The examiner's review did not reveal instances whereby the Company violated Section 4228(h) of the New York Insurance Law.</p> |
| F | <p>The Company violated Section 219.5(a) of Department Regulation No. 34-A by not maintaining a complete advertising file at its home office.</p> <p>This violation is repeated in this report on examination. (See section 9, item F of this report.)</p> |

| <u>Item</u> | Description |
|-------------|---|
| G | <p>The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that Disclosure Statements were accurate and complete.</p> <p>This violation is repeated in this report on examination. (See section 9, item G of this report.)</p> |
| H | <p>The Company violated Section 51.6(b)(7) of Department Regulation No. 60, because in the cases where the required forms were not received with the application, or if the forms did not meet the requirements of the Regulation or were not accurate, the Company failed to, within ten days from the date of receipt of the application, either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore.</p> <p>This violation is repeated in this report on examination. (See section 9, item H of this report.)</p> |
| I | <p>The examiner recommended that the Company indicate, on the notification letter to the replaced company, the documents being sent to the replaced company, such as the Disclosure Statement and sales material and/or illustration used in the sale. A similar violation appeared in the prior report on examination.</p> <p>The Company violated Section 243.2 of Department Regulation No. 152 by failing to maintain copy of replacement notice sent to replaced company, copy of authorization form, replaced Company's response, Important Notice and Disclosure Statement as part of its policy record, so that the examiner could reconstruct the solicitation, rating and underwriting of the contract or policy. (See section 9, item L of this report.)</p> |
| J | <p>The examiner recommended that the Company indicate on its letter of acceptance to the replaced company, the documents being sent to the replaced company, such as the Disclosure Statement and sales material and/or illustration used in the sale. A similar violation appeared in the prior report on examination.</p> <p>The Company violated 51.6 (b)(6) by failing to maintain copies of the notification of replacement to the insurer whose life insurance policy or annuity is to be replaced, Important Notice and signed and completed Disclosure Statement. (See section 9, item K of this report.)</p> |

| <u>Item</u> | Description |
|-------------|--|
| K | The examiner recommended that the Company amend its procedures to assure that any dates documented by the Company be easily accessible to examiners so that compliance with Section 51.6(e) of Department Regulation No. 60 can be easily demonstrated. |
| L | The Company violated Section 51.7(b) of Department Regulation No. 60 when it failed to comply with the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contract holders. A similar violation appears in this report. (See section 9, item J of this report.) |
| M | The Company violated Sections 243.2(b)(1) and 243.2(b)(1)(iv) of Department Regulation No. 152 by failing to maintain in its policy record, evidence to support the date the Authorization was sent to the replaced company so that the examiner could reconstruct the solicitation, rating, and underwriting of the contract or policy. This violation appeared in the prior report on examination. The Company violated Section 243.2 of Department Regulation No. 152 by failing to maintain copy of replacement notice sent to replaced company, copy of authorization form, replaced Company's response, Important Notice and Disclosure statement as part of its policy record, so that the examiner could reconstruct the solicitation, rating and underwriting of the contract or policy. (See section 9, item L of this report.) |
| N | The examiner recommended that the Company require its agents to have the applicants date the Authorization so the examiner can ascertain the initiation of the replacement process. The Company violated Section 243.2 of Department Regulation No. 152 by failing to maintain copy of replacement notice sent to replaced company, copy of authorization form, replaced Company's response, Important Notice and Disclosure statement as part of its policy record, so that the examiner could reconstruct the solicitation, rating and underwriting of the contract or policy. (See section 9, item L of this report.) |
| O | The examiner recommended that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee. |

| <u>Item</u> | Description |
|-------------|---|
| | A similar recommendation appears in this report. (See item L of the summary and conclusions) |
| P | <p>The Company violated Section 216.4(b) of Department Regulation No. 64 when it did not respond within 15 days to complaints received from its policyholders. This violation appeared in the prior report on examination.</p> <p>The examiner's review did not reveal any violation.</p> |
| Q | <p>The Company violated Section 216.4(d) of Department Regulation No. 64 when it did not furnish the Department with available information respecting a claim, within 10 business days.</p> <p>The examiner's review did not reveal any violation.</p> |
| R | <p>The examiner recommended that the Company maintain its complaint log in accordance with Department Circular Letter No. 11(1978). A similar violation appeared in the prior report on examination.</p> <p>The examiner's review did not reveal any violation or recommendation pertaining to the complaint log.</p> |

9. 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 Company violated Insurance Regulation No. 33, 11 NYCRR Section 91.4(f)(5) by using premium, policy count, assets under management and reserves as the basis for distributing costs among companies and annual statement lines of business within the Company. | 9 |
| B | The Company violated Insurance Regulation No. 33, 11 NYCRR Section 91.4(a) by failing to maintain records with sufficient detail to show fully the system actually used for the allocation of expenses and the actual bases of the allocation. | 9 |
| C | The Company violated Section 1505(d)(3) of the New York Insurance Law by having FGLBS manage its investment function without notifying the Superintendent in writing of its intention to enter into such transaction at least 30 days prior thereto. | 10 |
| D | The examiner recommends that board members attend scheduled board meetings. | 11 - 12 |
| E | The Company violated Section 1313(f) of the New York Insurance Law by providing policyholder or prospective policyholder advertisements containing financial condition of the parent company, F&G Life without separately illustrating the financial condition of the insurer. | 22 |
| F | The Company violated Insurance Regulation 34-A, 11 NYCRR Section 219.5(a) by not maintaining certain advertisements at its home office, and by failing to track the extent of distribution of advertisements distributed to the public in all cases. | 23 |
| G | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(3) by failing to examine and ascertain that the Disclosure Statements completed by its agents and submitted with policy applications during the examination period were accurate and complete. | 24 |

| <u>Item</u> | <u>Description</u> | <u>Page No(s).</u> |
|-------------|--|--------------------|
| H | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(7) by failing to either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor within ten days from the date of receipt of the application. | 24 |
| I | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(4) by failing to 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 within ten days of receipt of the application. | 25 |
| J | The Company violated Insurance Regulation No.60, 11 NYCRR Section 51.7(b) when it failed to comply with the orderly working of this part in accomplishing its intended purpose in the protection of policyholders and contract holders. | 25 |
| K | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6 (b)(6) by failing to maintain copies of the notification of replacement to the insurer whose life insurance policy or annuity is to be replaced, Important Notice and signed and completed Disclosure Statement. | 26 |
| L | The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2 by failing to maintain copies of the replacement notice sent to the replaced insurers, copies of the authorization form and the replaced insurer's response as part of its policy records, so that the examiner could reconstruct the solicitation and underwriting of the contract or policy. | 26 - 27 |
| M | The Company violated Insurance Regulation No.60, 11 NYCRR Section 51.5(c)(3) by presenting to the applicant "Disclosure Statement" signed by the agent or broker, after the application was signed. | 27 |
| N | The Company violated Insurance Regulation No.60, 11 NYCRR Section 51.8 by failing to complete a composite Disclosure Statement in situations involving multiple policies or contracts. | 27 |
| O | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.7(a)(1) by providing misleading information in the Disclosure Statement. | 28 |

| <u>Item</u> | <u>Description</u> | <u>Page No(s).</u> |
|-------------|--|--------------------|
| P | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(c) (2) by failing to provide the external carriers with the information necessary for the completion of the Disclosure Statement with respect to the life insurance policy proposed to be replaced. | 29 |
| Q | The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted above and provide relief to all policy and contract holders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts. | 29 |
| R | The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Insurance Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee. | 29 |
| S | The Company violated Section 403(d) of the New York Insurance Law and Insurance Regulation No. 95, 11 NYCRR Section 86.4(a) by failing to include the required fraud warning statement on its claim form. | 30 |
| T | The Company violated Section 3214(c) of the New York Insurance Law by failing to pay the required interest on the proceeds from the date of death of the annuitant to the date of payment. | 31 |
| U | The examiner recommends that the Company performs independent test annually as the AML program required. | 31 |
| V | The examiner recommends the company modify its record retention policy as to comply with Insurance Regulation No. 152, in all instances. | 32 |

Respectfully submitted,

_____/s/
Henry Wong
Senior Insurance Examiner

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

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

_____/s/
Henry Wong

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30954

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:

HENRY WONG

as a proper person to examine the affairs of the

FIDELITY & GUARANTY LIFE INSURANCE COMPANY OF NEW YORK

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

COMPANY

with such other information as he shall deem requisite.

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

this 7th day of February, 2013

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:


MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

