



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

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

APRIL 25, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

JEFFREY EBERT, CFE  
CHONG KIM

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

March 23, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31636, dated May 22, 2017, and Appointment No. 31567, dated January 26, 2017, and annexed hereto, an examination has been made into the condition and affairs of Gerber Life Insurance Company, hereinafter referred to as “the Company,” at its home office located at 1311 Mamaroneck Avenue, White Plains, NY 10605.

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

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

## 1. EXECUTIVE SUMMARY

The material violations and recommendations contained in this report are summarized below.

- The Company violated Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60) by failing to complete and provide applicants with the required “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” and the “Disclosure Statement,” in accordance with its approved alternate replacement procedures. (See item 7 of this report.)
- The Company violated Section 3201 of the New York Insurance Law by using an application form that was not filed with or approved by the Superintendent, form ICC13-AWLTL, and by using policy form with unapproved alternate language, forms PIE-NY-09, HWLP-13-NY, and SLT-05-NY. (See item 7 of this report.)
- The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective purchasers with a copy of the most recent buyer’s guide and the preliminary information at or prior to the time the application was taken. (See item 7 of this report.)
- The examiner recommends that the Company establish procedures to meet the requirement of Section 3209(b)(1)(A) of the New York Insurance Law to provide prospective purchasers with a copy of the most recent buyer’s guide and the preliminary information at or prior to the time an application is taken for all individual life products sold through the internet, telephone, and agents. (See item 7 of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating non-compliant notices of premium due to policyholders. (See item 7 of this report.)
- The examiner recommends that the Company revise all notices of premium due to include the language required by Section 3211(b)(2) the New York Insurance Law. (See item 7 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, 2017 Edition* (the “Handbook”). The examination covers the five-year period from January 1, 2012, through December 31, 2016. 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, 2016, but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

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

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

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 2012 through 2016, 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. To comply with the NAIC Annual Financial Reporting Model Regulation (“MAR”), the Company developed its own internal framework for evaluating the effectiveness of internal controls over statutory financial reporting. The Company’s MAR documentation on testing of controls was reviewed and relied upon for this examination. The Nestle Group Audit’s team performed periodic internal audits of the Company’s Information Technology General Controls and operations during the examination period. The internal audit reports and supporting workpapers were reviewed and relied upon during this examination.

The examiner reviewed the corrective actions taken by the Company with respect to the violation and recommendation contained in the prior report on examination. The results of the examiner’s review are contained in item 9 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 New York on December 22, 1967, and was licensed and commenced business on September 30, 1968. Initial resources of \$4,970,250, consisting of common capital stock of \$1,000,000 and paid in and contributed surplus of \$3,970,250, were provided through the sale of 100,000 shares of common stock (with a par value of \$10 each) for \$49.7025 per share.

In August 1994, Gerber Holding Company (“Gerber Holding”) was formed by Sandoz Corporation, the Company’s ultimate parent at that time, to purchase Gerber Products Company (“Gerber Products”).

In March 1996, Sandoz Corporation and Ciba-Geigy Ltd., a large Swiss pharmaceutical company, merged. The merger created Novartis AG Corporation (“Novartis AG”), the second largest pharmaceutical company in the world. Novartis AG then became the ultimate parent of the Company. Prior to April 2004, the Company was a wholly owned subsidiary of Gerber Products, which in turn was a direct wholly owned subsidiary of Gerber Holding. Gerber Holding was in turn a direct wholly owned subsidiary of Novartis Finance Corporation (“Novartis Finance”).

In April 2004, as part of a restructuring of Novartis Corporation’s (“Novartis”) holding company system, Gerber Holding merged into Novartis Finance. Following the merger, Gerber Products allocated all the Company’s stock to Novartis Finance, which became the direct parent of the Company.

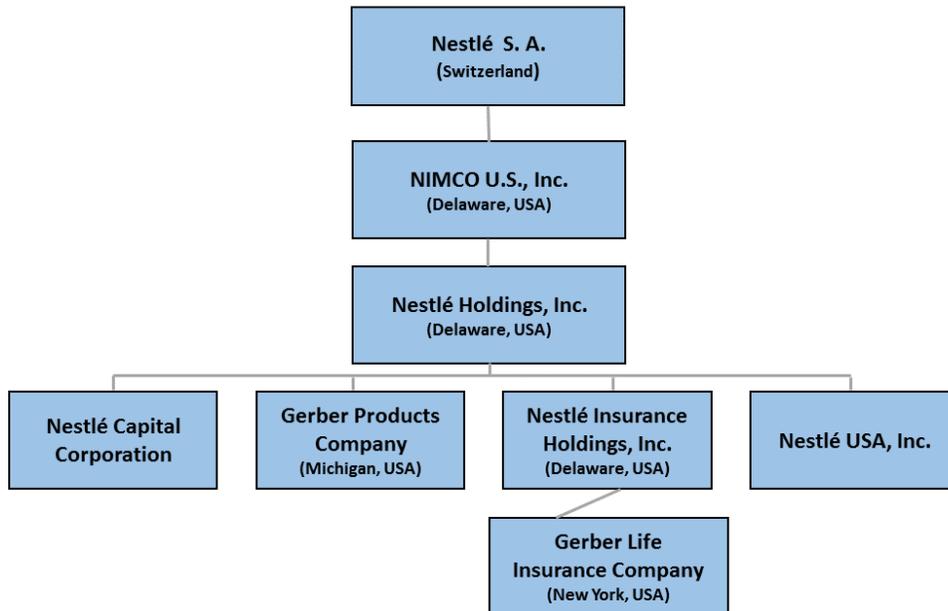
Pursuant to a Purchase Agreement dated April 11, 2007, Nestlé S.A., a Swiss transnational food and beverage company, agreed to purchase all the shares of stock of the Company from Novartis Finance. On August 31, 2007, Nestlé Insurance Holdings, Inc. acquired the shares of stock of the Company. The acquisition was approved by the Department on August 21, 2007.

## B. Holding Company

The Company is a wholly owned subsidiary of Nestlé Insurance Holdings, Inc., a Delaware insurance holding company, which is in turn a wholly owned subsidiary of Nestlé Holdings, Inc., a Delaware holding company. Nestlé Holdings, Inc. is wholly owned by NIMCO U.S. Inc., a Delaware holding company. The ultimate parent of the Company is Nestlé S.A.

## C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2016 follows:



#### D. Service Agreements

The Company had three 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 of Service(s) | Specific Service(s) Covered  | Income/ (Expense)* For Each Year of the Examination  |
|---|---|---|-------------------------|--|--|
| Demand Loan Agreement<br>File No. 52533   | 09/01/2007<br>and renewed annually through<br>5/01/2016 | Nestlé<br>Capital<br>Corporation              | The<br>Company          | Provides an uncommitted, unsecured line of credit  | 2012 \$(295,551)<br>2013 \$(546,908)<br>2014 \$(400,967)<br>2015 \$(251,476)<br>2016 \$(240,053)           |
| Service Agreement<br>File No. 51648<br><br>(replaces Service Agreement<br>File No. 48403)   | 01/01/2016<br><br>04/01/2014                            | Gerber<br>Products<br>and Nestlé<br>USA, Inc. | The<br>Company          | Human Resources, Information Technology, Ancillary Building Services, Finance, and Legal | 2016 \$(2,208,109)   |
| Service Agreement<br>File No. 51648<br>(the same agreement above)   | 01/01/2016  | The<br>Company                                | Gerber<br>Products      | Data storage and sharing of telephone systems used by the respective call centers        | 2016 \$202,902   |
| Service Agreement<br>File No. 48403<br><br>(replaces Service Agreement<br>File No. 45090)<br><br>(replaces Service Agreement<br>File No. 37303) | 04/01/2014<br><br>07/01/2012<br><br>07/01/2007          | Gerber<br>Products                            | The<br>Company          | Human Resources, Information Technology, Ancillary Building Services, Finance, and Legal | 2012 \$(3,088,782)<br>2013 \$(2,429,395)<br>2014 \$(2,220,810)<br>2015 \$(1,924,471)                       |
| Fremont Lease Agreement<br>File No. 45090   | 01/01/2012  | Gerber<br>Products                            | The<br>Company          | Lease of building space for business purposes  | 2012 \$(1,992,206)<br>2013 \$(1,992,206)<br>2014 \$(2,053,645)<br>2015 \$(2,053,645)<br>2016 \$(2,053,645) |

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

### E. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 7 and not more than 15 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in April of each year. As of December 31, 2016, the board of directors consisted of 12 members. Meetings of the board are held quarterly.

The 12 board members and their principal business affiliation, as of December 31, 2016, were as follows:

| <u>Name and Residence</u>              | <u>Principal Business Affiliation</u>   | <u>Year First Elected</u> |
|--|---|---------------------------|
| Eric J. Bulis<br>Hoboken, NJ           | Senior Vice President, Operations and<br>Chief Information Officer<br>Gerber Life Insurance Company | 2016                      |
| Thomas E. Conde<br>Ridgewood, NJ       | Senior Vice President, Group Benefits<br>Gerber Life Insurance Company                              | 2012                      |
| Annemarie G. DiCola*<br>Scarsdale, NY  | Chief Executive Officer<br>Trepp, LLC   | 2014                      |
| Lee S. Edwards<br>Vevey, Switzerland   | Head of Group Treasury<br>Nestlé S.A.   | 2016                      |
| Rock A. Foster<br>St. Louis, MO        | Chief Financial Officer<br>Nestlé Purina Pet Care Company   | 2013                      |
| David P. Frick<br>Vevey, Switzerland   | Head of Corporate Governance, Compliance and<br>Corporate Services<br>Nestlé S.A.                   | 2007                      |
| John E. Gould*<br>Scarsdale, NY        | Retired Executive Vice President and General Counsel<br>CH Energy Group, Inc.                       | 2000                      |
| Michelle Hoffman<br>West Nyack, NY     | Chief Financial Officer and Treasurer<br>Gerber Life Insurance Company                              | 2016                      |
| Harold Humbert<br>Switzerland          | Head of Finance and Control<br>Nestlé Nutrition   | 2016                      |
| Stephen C. Nesbitt*<br>Naples, Florida | Attorney<br>Self-Employed   | 2009                      |

| <u>Name and Residence</u>           | <u>Principal Business Affiliation</u>                                  | <u>Year First Elected</u> |
|-------------------------------------|--|---------------------------|
| Keith M. O'Reilly<br>Cheshire, CT   | President and Chief Executive Officer<br>Gerber Life Insurance Company | 2008                      |
| William J. Toppeta*<br>New York, NY | Attorney<br>Self-Employed  | 2016                      |

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

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

The following is a listing of the principal officers of the Company as of December 31, 2016:

| <u>Name</u>              | <u>Title</u>  |
|--------------------------|---|
| Keith M. O'Reilly        | President and Chief Executive Officer                           |
| Michelle Hoffman         | Senior Vice President, Chief Financial Officer and Treasurer    |
| Eric J. Bulis            | Senior Vice President, Operations and Chief Information Officer |
| Thomas E. Conde          | Senior Vice President, Group Benefits                           |
| Warren H. Silberstein    | Senior Vice President and Chief Actuary                         |
| Robert J. Lodewick, Jr.* | Vice President and General Counsel                              |

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

#### 4. TERRITORY AND PLAN OF OPERATIONS

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business in all 50 states, the District of Columbia, the territory of Puerto Rico, and Canada. In 2016, 11.0% of life premiums and 6.6% of accident and health premiums were received from New York. Policies are written on a non-participating basis.

##### A. Statutory and Special Deposits

As of December 31, 2016, the Company had \$1,660,000 (par value) of United States Treasury Bonds on deposit with the State of New York, its domiciliary state, for the benefit of all policyholders, claimants and creditors of the Company. As per confirmations received from the following states, which were reported in Schedule E of the 2016 filed annual statement, an additional \$1,688,000 was being held by the states of Arkansas, Georgia, New Mexico, and North Carolina, and the territory of Puerto Rico.

##### B. Direct Operations

The Company principally writes individual life insurance and group accident and health products. It is a leader in the juvenile life insurance market, while also providing insurance products for all stages of life. Life insurance products consist of underwritten and guaranteed issue whole life and term life policies and compose approximately two-thirds of the Company's total premium revenue. The Company's group accident and health insurance is predominately issued to employer groups and is mainly composed of medical stop-loss coverage. Ancillary group accident products consist of accidental death and dismemberment ("AD&D"), student accident, vision and dental, whereas ancillary individual accident and health products consist of AD&D, Medicare supplement and hospital indemnity coverages.

The Company primarily markets its life insurance products directly to consumers through direct mail, the internet, cooperative advertising, marketing inserts, direct television broadcasting and customer messaging. Individual life insurance and Medicare supplement insurance are also marketed through independent agents, whereas medical stop-loss insurance is distributed through Managing General Underwriters.

### C. Reinsurance

As of December 31, 2016, the Company had reinsurance treaties in effect with 59 companies, of which 21 were authorized or accredited. The Company's life and accident and health business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic basis.

The maximum retention limit for individual life contracts is \$50,000. The total face amount of life insurance ceded as of December 31, 2016, was \$3,944,937,000, which represents 7.86% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$494,423, was supported by trust agreements.

## 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 during the period under review:

|  | December 31,<br><u>2011</u> | December 31,<br><u>2016</u> | <u>Increase</u>        |
|--|-----------------------------|-----------------------------|------------------------|
| Admitted assets                        | <u>\$2,110,008,005</u>      | <u>\$3,397,640,374</u>      | <u>\$1,287,632,369</u> |
| Liabilities                            | <u>\$1,894,477,996</u>      | <u>\$3,090,662,883</u>      | <u>\$1,196,184,887</u> |
| Common capital stock                   | \$ 148,500,000              | \$ 148,500,000              | \$ 0                   |
| Gross paid in and contributed surplus  | 16,216,000                  | 23,409,332                  | 7,193,332              |
| Unassigned funds (surplus)             | <u>50,814,009</u>           | <u>135,068,159</u>          | <u>84,254,150</u>      |
| Total capital and surplus              | <u>\$ 215,530,009</u>       | <u>\$ 306,977,491</u>       | <u>\$ 91,447,482</u>   |
| Total liabilities, capital and surplus | <u>\$2,110,008,005</u>      | <u>\$3,397,640,374</u>      | <u>\$1,287,632,369</u> |

The Company's invested assets, as of December 31, 2016, were mainly comprised of bonds (90.8%), policy loans (4.7%), stocks (3.1%), and cash and short-term investments (1.4%).

The increase in assets reflects the Company's growth in premium and underwriting profit from operations, along with continued investment in its asset portfolio. The increase in liabilities is due to maturing business and greater amount of business in force. The increase in surplus is primarily due to net income from operations.

The majority (96.6%) of the Company's bond portfolio, as of December 31, 2016, was comprised of investment grade obligations.

The following indicates, for each of the years listed below, the amount of life insurance issued and in force by type (in thousands of dollars):

| <u>Year</u> | <u>Individual Whole Life</u> |                 | <u>Individual Term</u> |                 | <u>Group Life</u>             |                 |
|-------------|------------------------------|-----------------|------------------------|-----------------|-------------------------------|-----------------|
|             | <u>Issued</u>                | <u>In Force</u> | <u>Issued</u>          | <u>In Force</u> | <u>Issued &amp; Increases</u> | <u>In Force</u> |
| 2012        | \$5,403,606                  | \$31,126,771    | \$377,162              | \$10,731,850    | \$49,001                      | \$152,363       |
| 2013        | \$5,313,590                  | \$32,897,028    | \$380,429              | \$10,886,541    | \$ 2,603                      | \$ 29,315       |
| 2014        | \$4,985,511                  | \$34,648,908    | \$578,410              | \$11,223,404    | \$ 526                        | \$ 21,864       |
| 2015        | \$5,041,396                  | \$36,336,336    | \$647,560              | \$11,646,991    | \$ 940                        | \$ 17,935       |
| 2016        | \$5,049,631                  | \$38,003,053    | \$835,234              | \$12,164,787    | \$ 0                          | \$ 10,560       |

The decrease in issued group life insurance from 2012 to 2013 is primarily due to a large block of business not renewed. The term of each group life contract is one year, and it can or cannot be renewed by either the Company or the policyowner.

The following has been extracted from the Exhibits of Accident and Health Insurance in the filed annual statements for each of the years under review:

|                                   | <u>Group</u> |                |                |                |                |
|-----------------------------------|--------------|----------------|----------------|----------------|----------------|
|                                   | <u>2012</u>  | <u>2013</u>    | <u>2014</u>    | <u>2015</u>    | <u>2016</u>    |
| Outstanding, end of previous year | 3,472        | 7,389          | 8,182          | 10,690         | 12,129         |
| Issued during the year            | 4,433        | 4,909          | 6,414          | 7,277          | 4,934          |
| Other net changes during the year | <u>(516)</u> | <u>(4,116)</u> | <u>(3,906)</u> | <u>(5,838)</u> | <u>(4,728)</u> |
| Outstanding, end of current year  | <u>7,389</u> | <u>8,182</u>   | <u>10,690</u>  | <u>12,129</u>  | <u>12,335</u>  |

The increase in group accident and health insurance issued in 2014 and 2015 resulted from an increase in the Company's medical stop-loss business.

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>2012</u>          | <u>2013</u>          | <u>2014</u>          | <u>2015</u>          | <u>2016</u>          |
|---------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Ordinary:                 |                      |                      |                      |                      |                      |
| Life insurance            | \$ <u>3,637,699</u>  | \$ <u>4,646,513</u>  | \$ <u>2,433,834</u>  | \$ <u>4,351,895</u>  | \$ <u>1,683,532</u>  |
| Total ordinary            | \$ <u>3,637,699</u>  | \$ <u>4,646,513</u>  | \$ <u>2,433,834</u>  | \$ <u>4,351,895</u>  | \$ <u>1,683,532</u>  |
| Group:                    |                      |                      |                      |                      |                      |
| Life                      | \$ <u>340,639</u>    | \$ <u>192,060</u>    | \$ <u>257,009</u>    | \$ <u>276,348</u>    | \$ <u>450,900</u>    |
| Total group               | \$ <u>340,639</u>    | \$ <u>192,060</u>    | \$ <u>257,009</u>    | \$ <u>276,348</u>    | \$ <u>450,900</u>    |
| Accident and health:      |                      |                      |                      |                      |                      |
| Group                     | \$ 9,413,083         | \$ 8,470,380         | \$10,593,711         | \$ 8,996,569         | \$ 7,304,854         |
| Other                     | <u>2,424,594</u>     | <u>858,963</u>       | <u>2,819,764</u>     | <u>1,374,344</u>     | <u>3,191,615</u>     |
| Total accident and health | \$ <u>11,837,677</u> | \$ <u>9,329,343</u>  | \$ <u>13,413,475</u> | \$ <u>10,370,913</u> | \$ <u>10,496,469</u> |
| Total                     | \$ <u>15,816,015</u> | \$ <u>14,167,916</u> | \$ <u>16,104,318</u> | \$ <u>14,999,156</u> | \$ <u>12,630,901</u> |

The fluctuations in ordinary and group life insurance net gain from operations during the examination period is primarily due increases in revenue growth in 2013 and 2015, and decreases in revenue growth in 2014 and 2016.

The year-over-year fluctuations in the accident and health other line of business is due to fluctuations in disability benefit paid.

## 6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2016, as contained in the Company's 2016 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, 2016 filed annual statement.

### A. Independent Accountants

The Company retained the firm of KPMG LLP to audit its combined statutory basis statements of financial position as of December 31<sup>st</sup> 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  | \$2,838,232,225            |
| Stocks:  |                            |
| Preferred stocks   | 11,089,003                 |
| Common stocks  | 85,668,518                 |
| Cash, cash equivalents and short term investments  | 42,616,339                 |
| Contract loans   | 147,360,296                |
| Investment income due and accrued  | 33,989,652                 |
| Premiums and considerations:   |                            |
| Uncollected premiums and agents' balances in the course of collection                    | 32,280,861                 |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 117,535,648                |
| Reinsurance:   |                            |
| Amounts recoverable from reinsurers  | 699,562                    |
| Other amounts receivable under reinsurance contracts                                     | 6,839,600                  |
| Net deferred tax asset   | 27,970,064                 |
| Guaranty funds receivable or on deposit  | 756,130                    |
| Electronic data processing equipment and software  | 8,034,780                  |
| Receivables from parent, subsidiaries and affiliates                                     | 46,109                     |
| Group benefits account balance   | 43,680,321                 |
| Due from agents  | 354,057                    |
| Other receivables  | <u>487,209</u>             |
| <br>Total admitted assets  | <br><u>\$3,397,640,374</u> |

C. Liabilities, Capital and Surplus

|  |                            |
|--|----------------------------|
| Aggregate reserve for life policies and contracts  | \$2,679,122,567            |
| Aggregate reserve for accident and health contracts  | 1,916,839                  |
| Contract claims:   |                            |
| Life   | 22,045,113                 |
| Accident and health  | 120,475,048                |
| Premiums and annuity considerations for life and accident and health contracts received in advance | 11,992,398                 |
| Contract liabilities not included elsewhere:   |                            |
| Interest maintenance reserve   | 143,921,841                |
| Commissions to agents due or accrued   | 13,284,197                 |
| General expenses due or accrued  | 16,125,981                 |
| Taxes, licenses and fees due or accrued, excluding federal income taxes                            | 3,118,961                  |
| Current federal and foreign income taxes   | 3,285,557                  |
| Remittances and items not allocated  | 3,075,060                  |
| Net adjustment due to foreign exchange rates   | 8,228,554                  |
| Borrowed money and interest thereon  | 10,252,015                 |
| Miscellaneous liabilities:   |                            |
| Asset valuation reserve  | 24,403,528                 |
| Reinsurance in unauthorized companies  | 998,742                    |
| Payable to parent, subsidiaries and affiliates   | 4,434,568                  |
| Interest on death claims pending   | 222,907                    |
| Due to group benefits accounts   | 14,476,374                 |
| Miscellaneous payables   | 7,066,925                  |
| Current year escheatable items   | <u>2,215,708</u>           |
| <br>Total liabilities  | <br><u>\$3,090,662,883</u> |
| <br>Common capital stock   | <br>\$ 148,500,000         |
| Gross paid in and contributed surplus  | 23,409,332                 |
| Unassigned funds (surplus)   | <u>135,068,159</u>         |
| Surplus  | \$ <u>158,477,491</u>      |
| Total capital and surplus  | \$ <u>306,977,491</u>      |
| <br>Total liabilities, capital and surplus   | <br><u>\$3,397,640,374</u> |

D. Condensed Summary of Operations

|   | <u>2012</u>          | <u>2013</u>          | <u>2014</u>          | <u>2015</u>          | <u>2016</u>          |
|---|----------------------|----------------------|----------------------|----------------------|----------------------|
| Premiums and considerations                                   | \$464,087,339        | \$506,800,267        | \$565,258,922        | \$604,241,198        | \$690,008,484        |
| Investment income   | 105,332,302          | 113,419,564          | 120,621,181          | 127,241,409          | 129,543,818          |
| Commissions and reserve<br>adjustments on reinsurance ceded   | 76,744,483           | 58,074,988           | 57,568,053           | 50,393,386           | 51,707,500           |
| Miscellaneous income  | <u>13,038,050</u>    | <u>12,470,454</u>    | <u>12,570,315</u>    | <u>11,669,569</u>    | <u>11,848,682</u>    |
| Total income  | <u>\$659,202,174</u> | <u>\$690,765,273</u> | <u>\$756,018,470</u> | <u>\$793,545,562</u> | <u>\$883,108,484</u> |
| Benefit payments  | \$199,951,116        | \$212,023,738        | \$249,981,008        | \$264,085,827        | \$311,588,661        |
| Increase in reserves  | 162,340,257          | 184,124,097          | 205,768,363          | 224,718,159          | 250,148,385          |
| Commissions   | 121,909,720          | 104,724,438          | 108,502,214          | 104,778,100          | 118,646,742          |
| General expenses and taxes                                    | 144,649,836          | 159,630,042          | 160,685,330          | 167,136,786          | 177,325,538          |
| Increase in loading on deferred and<br>uncollected premiums   | 2,945,357            | 4,442,433            | 4,971,566            | 6,600,873            | 4,703,992            |
| Net gain from operations                                      | \$ 27,405,888        | \$ 25,820,526        | \$ 26,109,990        | \$ 26,225,817        | \$ 20,695,166        |
| Federal and foreign income taxes<br>incurred                  | <u>11,589,874</u>    | <u>11,652,610</u>    | <u>10,005,672</u>    | <u>11,226,661</u>    | <u>8,064,903</u>     |
| Net gain from operations<br>before net realized capital gains | \$ 15,816,014        | \$ 14,167,916        | \$ 16,104,318        | \$ 14,999,156        | \$ 12,630,263        |
| Net realized capital gains                                    | <u>4,341,238</u>     | <u>8,516,503</u>     | <u>8,048,968</u>     | <u>3,467,463</u>     | <u>2,646,244</u>     |
| Net income  | <u>\$ 20,157,252</u> | <u>\$ 22,684,419</u> | <u>\$ 24,153,286</u> | <u>\$ 18,466,619</u> | <u>\$ 15,276,507</u> |

The year-over-year increase in premiums and considerations resulted from general business growth, particularly in the Company's guaranteed life business.

The 2013 decrease in commissions and reserve adjustments on reinsurance ceded was attributed primarily to a decrease on allowances from ceded accident and health insurance.

The year-to-year increase in benefit payments from 2013 to 2016 resulted primarily from an increase in claim activities associated with the Company's guaranteed life business, and an increase in accident and health benefits attributed to the year-over-year increase in the Company's stop-loss business.

The year-over-year increase in reserves is a function of both the growth of the Company's business and the type of products in force. The Company has been writing a lot of guaranteed life business (older individuals and no underwriting) for which reserves tend to build up faster.

The decrease in commissions in 2013 resulted primarily from a \$13 million reclassification of administrative expenses associated with business written by Mutual of Omaha ("MOO"), one of the Company's third-party administrators, from the commissions expense line to general expenses. In addition, MOO wrote less business on behalf of the Company in 2013 compared with 2012, which accounted for approximately \$6 million of the decrease in commissions for the year. The increase in commissions in 2016 was directly attributed to the large increase in the Company's assumed stop-loss business.

The 2013 increase in general expenses and taxes resulted from the reclassification of administrative expenses.

E. Capital and Surplus Account

|  | <u>2012</u>           | <u>2013</u>           | <u>2014</u>           | <u>2015</u>           | <u>2016</u>           |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Capital and surplus,<br>December 31, prior year                  | \$ <u>215,530,009</u> | \$ <u>237,902,560</u> | \$ <u>263,518,933</u> | \$ <u>285,323,300</u> | \$ <u>295,796,067</u> |
| Net income   | \$ 20,157,252         | \$ 22,684,419         | \$ 24,153,286         | \$ 18,466,619         | \$ 15,276,507         |
| Change in net unrealized<br>capital gains (losses)               | 4,813                 | 3,871,156             | (3,252,754)           | (3,034,585)           | (255,754)             |
| Change in net unrealized foreign<br>exchange capital gain (loss) | 0                     | (1,181,999)           | (1,342,327)           | (3,673,262)           | (2,030,966)           |
| Change in net deferred income tax                                | 3,119,862             | 5,739,817             | (343,708)             | 8,856,765             | 4,827,370             |
| Change in non-admitted assets<br>and related items               | (2,041,114)           | (3,648,062)           | 7,471,106             | (8,180,629)           | (4,622,354)           |
| Change in liability for reinsurance<br>in unauthorized companies | (3,397)               | (303,416)             | (211,819)             | (1,465,352)           | 1,128,303             |
| Change in reserve valuation basis                                | 0                     | 0                     | 0                     | 0                     | 0                     |
| Change in asset valuation reserve                                | (5,392,196)           | 713,423               | (4,610,292)           | (1,095,709)           | (3,184,373)           |
| Surplus adjustments:   |                       |                       |                       |                       |                       |
| Paid in  | 6,527,332             | 0                     | 0                     | 666,000               | 0                     |
| Adoption of SSAP 102   | 0                     | (1,491,329)           | 0                     | 0                     | 0                     |
| Adoption of SSAP 92  | <u>0</u>              | <u>(767,636)</u>      | <u>(59,125)</u>       | <u>(67,081)</u>       | <u>42,691</u>         |
| Net change in capital and surplus<br>for the year                | \$ <u>22,372,551</u>  | \$ <u>25,616,373</u>  | \$ <u>21,804,367</u>  | \$ <u>10,472,767</u>  | \$ <u>11,181,424</u>  |
| Capital and surplus,<br>December 31, current year                | \$ <u>237,902,560</u> | \$ <u>263,518,933</u> | \$ <u>285,323,300</u> | \$ <u>295,796,067</u> | \$ <u>306,977,491</u> |

## 7. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

### A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60) states, in part:

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

(2) require with or as part of each application a copy of the sales material including any proposal, used in the sale of the 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’;

(3) prior to the delivery of the life insurance policy or annuity contract, require an accurate and complete ‘Disclosure Statement’ signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to this Part, including the primary reason or reasons for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract cannot meet the applicant’s objectives;

(4) examine the sales material, including any proposal, used in the sale of the 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 regulation promulgated thereunder;

(5) deliver the completed ‘Disclosure Statement’ to the policy or contract holder no later than the time of delivery of the policy or contract. The insurer may, at its discretion, require the ‘Disclosure Statement’ to be signed by the applicant, a copy of which shall be provided to the applicant at the time the applicant signs the ‘Disclosure Statement; . . .”

The Company has alternate replacement procedures filed with and approved by the Department. The procedures provide that if the applicant answers “yes” to the replacement question on the application and the replacement indicated is for other than an internal term to term replacement, the application will be rejected. If the applicant answers “yes” to the replacement

question and the replacement indicated is for an internal term to term replacement, the application will be processed in accordance with the alternate replacement procedures.

The Company had 23 life replacements, 16 internal and 7 external, processed during the examination period. Two of the 16 internal life replacements were term life to term life. In these two instances, the Company failed to complete and provide the required replacement materials. For the remaining 14 internal replacements that were not term life to term life, the Company failed to reject the applications or, once the applications were accepted, failed to complete and provide applicants with the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts”, and “the Disclosure Statement.”

In all instances of the 7 external replacements, the Company failed to either reject the applications or complete and provide applicants with the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts”, and “the Disclosure Statement,” once the applications were accepted.

The Company violated Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60) by failing to complete and provide applicants with the required “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” and the “Disclosure Statement,” in accordance with its approved alternate replacement procedures.

#### 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 of the New York Insurance Law states, in part:

“(a) In this article, ‘policy form’ means any policy, contract, certificate, or evidence of insurance and any application therefor, or rider or endorsement thereto . . .

(b)(1) No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law. . . .”

The review of life insurance policy forms used during the examination period revealed the following:

- i. The Company used an application, form ICC13-AWLTL, which was completed and signed by the applicant, to issue a life insurance product. The form was not filed with or approved by the Superintendent for use in New York.
- ii. Policy forms PIE-NY-09, HWLP-13-NY, and SLT-05-NY were filed with and approved by the Superintendent for use in New York. However, the policy forms used by the Company had language that either was added or deleted from the approved versions. The alternate language contained in the policy forms is not permissible variable material; therefore, all language additions and deletions should have been submitted to the Superintendent for approval. Since this alternate language was not approved, its inclusion in the policy forms constituted use of unapproved policy forms.

The Company violated Section 3201 of the New York Insurance Law by using an application form that was not filed with or approved by the Superintendent, form ICC13-AWLTL, and by using policy form with unapproved alternate language, forms PIE-NY-09, HWLP-13-NY, and SLT-05-NY.

Section 3209(b)(1) of the New York Insurance Laws states, in part:

“No policy of life insurance shall be delivered or issued for delivery in this state . . . unless the prospective purchaser has been provided with the following:  
(A) a copy of the most recent buyer's guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken. When sales solicitations are made by mail, without the involvement of an agent or broker, each initial solicitation must include a copy of the buyer's guide unless the policy for which application is made provides for a period of at least thirty days within which the applicant may return the policy for an unconditional refund of the premiums paid, in which event the buyer's guide must be delivered with the policy . . .”

The review of a sample of 139 life insurance policies sold through the internet, telephone, and agents revealed that in all instances the Company did not provide policyholders with a copy of the most recent buyer's guide and the preliminary information at or prior to the time the application was taken.

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective purchasers with a copy of the most recent buyer's guide and the preliminary information at or prior to the time the application was taken.

The examiner recommends that the Company establish procedures to meet the requirement of Section 3209(b)(1)(A) of the New York Insurance Law to provide prospective purchasers with a copy of the most recent buyer's guide and the preliminary information at or prior to the time an application is taken for all individual life products sold through the internet, telephone, and agents.

### 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 3211(b) of the New York Insurance Law states, in part:

“The notice required by paragraph one of subsection (a) hereof shall: . . .  
(2) state the amount of such payment, the date when due, the place where and the person to whom it is payable; and shall also state that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.”

The review of 83 lapsed life insurance policies showed that in all instances the notice of premium due sent to policyholders failed to include the language that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse, except as to the right to any cash surrender value or non-forfeiture benefit.

The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating non-compliant notices of premium due to policyholders.

The Company conducted a study to identify insureds who have died within one year of the lapse of their policy. The Company's research included a cross-check through the social security death master file. The Company identified 62 policies where death occurred within one year of policy lapse processing.

The examiner recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies where death occurred within one year of policy lapse processing

## 8. POLICY SELF-SUPPORT

Section 4228(h) of the New York Insurance Law states, in part:

“No Company shall offer for sale any life insurance policy form or annuity contract form covered by this section or any debit life insurance policy form which shall not appear to be self-supporting on reasonable assumptions as to interest, mortality, persistency, taxes, agents’ and brokers’ survival and expenses resulting from the sale of the policy or contract form. For all such forms offered for sale in this state, and for all forms filed for use outside this state by domestic life insurance companies, a statement that the requirements of this subsection have been met, signed by an actuary who is a member in good standing of the American Academy of Actuaries and meets the requirements prescribed by the superintendent by regulation shall be submitted with each such life insurance policy or annuity contract form filed pursuant to paragraph one or six of subsection (b) of section three thousand two hundred one of this chapter. A demonstration supporting each such statement, signed by an actuary meeting such qualifications, shall be retained in the company’s home office, while such form is being offered in this state and for a period of six years thereafter and be available for inspection. . . .”

The examiner conducted a review of the pricing adequacy for various products subject to Section 4228(h) of the New York Insurance Law. This review included an examination of the required actuarial statements of self-support and the supporting demonstrations. The examiner requested statements and corresponding demonstrations for the Company’s policy forms subject to Section 4228(h) of the New York Insurance Law. While the Company made some improvements since the prior examination, certain issues were still noted. For one form, with 19,433 policies issued, a signed and dated demonstrations of self-support was not produced. For three other forms, the company was able to demonstrate that work was performed prior to signing the statement; however, the demonstrations were not dated until after the statement was signed.

The Company violated Section 4228(h) of the New York Insurance Law by either failing to have a completed demonstration of self-support or failing to complete a demonstration prior to signing the statement of self-support.

In response to the Department’s concerns, the Company agreed that all future demonstrations will be signed, dated and finalized prior to the date of the statement of self-support. As with other provided demonstrations, the Company also agreed that such demonstrations will be well organized, containing detailed narrative descriptions of the methodologies and material

assumptions used such that another actuary can make a reasonable assessment of the analyses performed.

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and recommendation 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 4228(h) of the New York Insurance Law by failing to have a qualified actuary sign and date the demonstrations.</p> <p>The Company agreed that all future demonstrations will be signed, dated and finalized before the date of the statement of self-support. The Company also agreed that the demonstrations will be well organized, containing detailed narrative descriptions of the methodologies and material assumptions used so that another actuary could make a reasonable assessment of the analyses performed.</p> |
| B           | <p>The examiner recommends that the Company provide, in a conspicuous manner, cash surrender value notifications as required by Section 3211(g) of the New York Insurance Law.</p> <p>The examiner's review indicates that the Company now mails notifications of cash surrender value to policyholders annually, as required by Section 3211(g) of the New York Insurance Law.</p>   |

## 10. 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 Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60) by failing to complete and provide applicants with the required “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” and the “Disclosure Statement,” in accordance with its approved alternate replacement procedures.   | 22                 |
| B           | The Company violated Section 3201 of the New York Insurance Law by using an application form that was not filed with or approved by the Superintendent, form ICC13-AWLTL, and by using policy form with unapproved alternate language, forms PIE-NY-09, HWLP-13-NY, and SLT-05-NY.   | 23                 |
| C           | The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective purchasers with a copy of the most recent buyer’s guide and the preliminary information at or prior to the time the application was taken.  | 24                 |
| D           | The examiner recommends that the Company establish procedures to meet the requirement of Section 3209(b)(1)(A) of the New York Insurance Law to provide prospective purchasers with a copy of the most recent buyer’s guide and the preliminary information at or prior to the time an application is taken for all individual life products sold through the internet, telephone, and agents. | 24                 |
| E           | The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating non-compliant notices of premium due to policyholders.  | 24                 |
| F           | The examiner recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies where death occurred within one year of policy lapse processing.  | 25                 |
| G           | The Company violated Section 4228(h) of the New York Insurance Law by either failing to have a completed demonstration of self-support or failing to complete a demonstration prior to signing the statement of self-support.  | 25                 |

Respectfully submitted,

  
\_\_\_\_\_  
Jeffrey Ebert, CFE  
Risk & Regulatory Consulting, LLC

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

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

  
\_\_\_\_\_  
Jeffrey Ebert

Subscribed and sworn to before me

this 26<sup>th</sup> day of June, 2018

*Audrey Hall*

**AUDREY HALL**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01HA6274900  
Qualified in Kings County  
Commission Expires January 28, 2021

Respectfully submitted,

\_\_\_\_\_  
/s/

Chong Kim  
Senior Insurance Examiner

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

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

\_\_\_\_\_  
/s/

Chong Kim

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_

APPOINTMENT NO. 31636

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, MARIA T. VULLO, 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:

**JEFFREY EBERT**  
**(RISK & REGULATORY CONSULTING, LLC)**

as a proper person to examine the affairs of the

**GERBER LIFE INSURANCE COMPANY**

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 22nd day of May, 2017

MARIA T. VULLO  
Superintendent of Financial Services

By: Mark McLeod  
MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU



*APPOINTMENT NO. 31567*

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

*I, MARIA T. VULLO, 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:*

**CHONG KIM**

*as a proper person to examine the affairs of the*

**GERBER LIFE INSURANCE COMPANY**

*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 26th day of January, 2017*

**MARIA T. VULLO**  
*Superintendent of Financial Services*

*By:*

*Mark McLeod*

**MARK MCLEOD**  
**DEPUTY CHIEF - LIFE BUREAU**

