



TARGETED MARKET CONDUCT REPORT ON EXAMINATION

OF THE

FIRST SYMETRA NATIONAL LIFE INSURANCE COMPANY

OF NEW YORK

AS OF DECEMBER 31, 2020

EXAMINER:

JAMES WANG

DATE OF REPORT:

FEBRUARY 28, 2022

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

August 19, 2022

Honorable Adrienne A. Harris
Superintendent of Financial Services
New York, New York 10004

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32324, dated December 1, 2021, and annexed hereto, an examination has been made into the condition and affairs of First Symetra National Life Insurance Company of New York, hereinafter referred to as “the Company”. Due to the COVID-19 pandemic, the examination was conducted remotely.

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 findings, violations and recommendation contained in this report are summarized below.

- The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to provide full and clear information to the applicant on when the applicant is expected to receive the completed Disclosure Statement. (See item 4A-1 of this report.)
- The examiner recommends that the Company develop and implement controls to monitor the distribution partners' use of proper replacement forms and ensure that they are following the specific process (front-end and back-end) as described in the filed replacement procedures. (See item 4A-1 of this report.)
- The Company violated Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to monitor and enforce its filed replacement procedures. (See item 4A-2 of this report.)
- The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to ensure that the revised Disclosure Statement is complete and signed by the insurance agent or broker. (See item 4A-3 of this report.)
- The Company violated Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to give the policyowner the right to return the policy or contract within 60 days from the date of delivery of such policy or contract. (See item 4A-4 of this report.)
- The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by using replacement forms that the superintendent has not determined to be substantially equivalent to the forms set forth in the appendices. (See item 4A-5 of this report.)
- The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information to the applicant at or prior to the time the application was taken. (See item 4B-1 of this report.)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing policies with application policy forms that were not filed with the superintendent and that

differed from the forms that were filed with the superintendent. (See item 4B-2 of this report.)

- The Company violated Section 41.4(e)(2) of 11 NYCRR 41 (Insurance Regulation 143) by failing to include in the application for accelerated death benefits that prior to applying for such benefits, policyowners should seek assistance from a qualified tax advisor. (See item 4B-2 of this report.)
- The Company violated Section 2611(a) of New York Insurance Law by failing to obtain written informed consent prior to subjecting applicants to HIV related testing. (See item 4B-3 of this report.)
- The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the fraud warning statement immediately above the space provided for the signature of the person executing the claim form. (See item 4D of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2018, to December 31, 2020.

The examination comprised a review of the Company's electronic application process and related market conduct activities. The examination also included a review of the claim forms utilized by the Company.

This report on examination is confined to comments on matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of New York on April 23, 1987, and was licensed and commenced business on January 2, 1990. Initial resources of \$8,500,000, consisting of common (preferred) capital stock of \$2,000,000 and paid in and contributed surplus of \$6,500,000, were provided through the sale of 20,000 shares of common stock (with a par value of \$100 each) for \$425 per share. Sumitomo Life Insurance Company (“SL”), a Japanese mutual life insurer, acquired Symetra Financial Corporation (“SFC”) in accordance with a merger agreement dated August 11, 2015. Effective February 1, 2016, the acquisition was completed and SFC became a wholly owned subsidiary of SL.

On November 28, 2018, a cash surplus contribution of \$25,000,000 was paid to the Company by Symetra Life Insurance Company, its parent. As of December 31, 2020, the Company’s capital and paid in and contributed surplus were \$2,000,000 and \$85,000,000, respectively.

B. Territory and Plan of Operation

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

The Company is licensed to transact business only in New York. In 2020, all life insurance premiums and annuity considerations were received from New York. Policies are written on a non-participating basis.

4. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's electronic application processes for life insurance and annuities to determine compliance with applicable statutes and regulations and the operating rules of the Company. The examiner also reviewed various elements of the Company's claim forms to determine compliance with applicable statutes and regulations.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies as part of the Company's electronic application process review.

1. Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“To protect the interest of the public by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of life insurance policies and annuity contracts; by making available full and clear information on which an applicant for life insurance or annuities can make a decision in his or her own best interest; by reducing the opportunity for misrepresentation and incomplete comparison in replacement situations (commonly referred to as twisting); and by precluding unfair methods of competition and unfair practices.”

The examiner's review of a sample of 21 life replacement transactions revealed that in 14 cases (66.7%), the Company used Definition of Replacement form number LU-836/NY 1/17. In 13 out of the 21 cases (61.9%), the Company used Important Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts form number LU835/NY 1/17. The examiner's review of a sample of 159 annuity replacement transactions revealed that in 64 cases (40.3%), the Company used Definition of Replacement form number LP-1256/NY 10/16 and Important Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts form number LP-1255/NY 10/16.

The examiner determined that Definition of Replacement forms LU-836/NY 1/17, LP-1256/NY 10/16 and Important Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts forms LU835/NY 1/17, LP-1255/NY 10/16 are Alternate 1 Forms

posted on the Department's website and these forms should only be used for front end process in which the Disclosure Statement is presented to the customer at the time of the application. However, the review of all the transactions listed above indicated that the Disclosure Statement was not provided to the applicant at the time of application.

The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to provide full and clear information to the applicant on when the applicant is expected to receive the completed Disclosure Statement.

The examiner recommends that the Company develop and implement controls to monitor the distribution partners' use of proper replacement forms and ensure that they are following the specific process (front-end and back-end) as described in the filed replacement procedures.

2. Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“Both the insurer that issued the life insurance policy or annuity contract that is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. These procedures shall include a requirement that all material be dated upon receipt. Such insurers shall also designate a principal officer specifically responsible for the monitoring and enforcement of these procedures.”

The Company's Regulation 60 procedures that are filed with the Department under Department file number 57506 state, in part, that “Disclosure Statement should be completed after the underwriter approves the policy for the rate applied for and the word ‘revised’ should be noted on revised Disclosure Statement.” The examiner's review of the 21 life replacement transactions revealed that in 4 cases (19.0%), the original Disclosure Statement was completed prior to or at the time of the application, then a revised Disclosure Statement was completed later. In 3 out of 21 the cases (14.3%), the revised Disclosure Statement was not labeled “revised”. Therefore, the Company failed to follow its filed replacement procedures.

The examiner's review of the Company's annuity replacement files indicated that for all 91 replacements under the two-step replacement process, the Company was unable to provide evidence that the client received the first Disclosure Statement at the time of application. The Company holds the assumption that the agent reviewed the Disclosure Statement with the client at

the time of application. In such a case, there is no oversight or monitoring by the Company to ensure its replacement procedures filed with the Department were followed by the agent.

The Company violated Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to monitor and enforce its filed replacement procedures.

3. Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“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”

The examiner’s review of the 159 annuity replacement transactions revealed that in 24 cases (15.1%), the agent did not sign the revised Disclosure Statement.

The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to ensure that the revised Disclosure Statement is complete and signed by the insurance agent or broker.

4. Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“Any insurer that issues a replacement life insurance policy or annuity contract shall provide to the policy or contract owner the right to return the policy or contract within 60 days from the date of delivery of such policy or contract and receive an unconditional full refund of all premiums or considerations paid on it, or in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender benefits provided under the policy or contract, plus the amount of all fees and other charges deducted from gross considerations or imposed under the policy or contract.”

The examiner’s review of the 159 annuity replacement transactions revealed that in all replacements (100%), the policy contract stated, in part, that: “...you may return it within 30 days from the date you received it by delivering or mailing it, along with a written request for cancellation, to First Symetra or to the Insurance Producer from whom it was purchased.”

The Company violated Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to give the policyowner the right to return the policy or contract within 60 days from the date of delivery of such policy or contract.

5. Section 51.8 of 11 NYCRR 51 states that:

“The forms set forth in Appendices 10A, 10B, 10C and 11 of this Title are hereby approved for use as specified in this Part. The forms shall be set forth in at least 12-point type and shall be highlighted as indicated herein. In lieu of the forms set forth in the appendices, an insurer may adopt and use forms that the superintendent has determined to be substantially equivalent to the forms set forth in the appendices.”

A review of 31 electronically signed annuity applications processed during the examination period revealed that in 18 cases (58.1%), the Company used the Definition of Replacement form that belongs with Chase Insurance Agency. This form was not filed with the Department and, therefore, has not been determined by the superintendent to be substantially equivalent to the forms set forth in the appendices.

The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by using replacement forms that the superintendent has not determined to be substantially equivalent to the forms set forth in the appendices.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms as part of the Company’s electronic application process review.

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

“ . . . (b)(1) No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date, as set forth in subsection (n) of this section, unless the prospective purchaser has been provided with the following:
(A) a copy of the most recent buyer’s guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken . . . ”

The examiner reviewed a sample of 55 term life insurance policies issued from 2018 to 2020 and noted that in all instances (100%), the preliminary information was not provided to the applicant.

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information to the applicant at or prior to the time the application was taken.

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

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

Section 41.4 (e)(2) of 11 NYCRR 41 (Insurance Regulation 143) states, in part:

“(e) The application or claim form to accelerate the payment of the death benefit of a life insurance policy shall provide for the following: . . .

(2) a notice prominently displayed to read ‘Receipt of accelerated death benefits may be taxable. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for such benefits, (policyowners) (certificate holders) should seek assistance from a qualified tax advisor’. For policies that accelerate pursuant to Insurance Law section 1113(a)(1)(E) or (F), the disclosure shall further state ‘Receipt of this type of accelerated death benefit is not expected to receive the same favorable tax treatment as other types of accelerated death benefits that may be available to you’”

The examiner’s review of the sample of 56 life policies issued during the examination period revealed that in 50 instances (89.3%), the policy file contained application policy forms that were not filed with and approved by the superintendent.

The review of the same 56 life insurance policies revealed that in 55 instances (98.2%), the Company used policy form number LUC-118/NY 1/13 which failed to contain the clause: “Prior to applying for such benefits, policyowners should seek assistance from a qualified tax advisor.” This clause was included in the filed application form.

The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing policies with application policy forms that were not filed with the superintendent and that differed from the forms that were filed with the superintendent.

The Company violated Section 41.4(e)(2) of 11 NYCRR 41 (Insurance Regulation 143) by failing to include in the application for accelerated death benefits that prior to applying for such benefits, policyowners should seek assistance from a qualified tax advisor.

3. Section 2611(a) of New York Insurance Law states:

“No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.”

The examiner’s review of a sample of 56 electronic life insurance applications processed revealed that in 2 cases (3.6%), the HIV consent form was signed after the HIV related testing.

The Company violated Section 2611(a) of New York Insurance Law by failing to obtain written informed consent prior to subjecting applicants to HIV related testing.

C. Option to Opt-Out

The examiner verified that the applicants had an opportunity to opt out of the electronic process as required by Section 309 of the New York State Technology Law.

D. Treatment of Policyholders

The examiner reviewed a sample of life insurance death claims.

Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) states, in part:

“. . . The warning statements required by subdivisions (a), (b) and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form and shall be printed in type which will produce a warning statement of conspicuous size”

The examiner’s review of a sample of 74 death claims processed during the examination period revealed that in 43 instances (58.1%), the statutorily required fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form.

The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the fraud warning statement immediately above the space provided for the signature of the person executing the claim form.

5. SUMMARY AND CONCLUSIONS

Following are the violations and recommendation contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to provide full and clear information to the applicant on when the applicant is expected to receive the completed Disclosure Statement.	7
B	The examiner recommends that the Company develop and implement controls to monitor the distribution partners' use of proper replacement forms and ensure that they are following the specific process (front-end and back-end) as described in the filed replacement procedures.	7
C	The Company violated Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to monitor and enforce its filed replacement procedures.	8
D	The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to ensure that the revised Disclosure Statement is complete and signed by the insurance agent or broker.	8
E	The Company violated Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to give the policyowner the right to return the policy or contract within 60 days from the date of delivery of such policy or contract.	9
F	The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by using replacement forms that the superintendent has not determined to be substantially equivalent to the forms set forth in the appendices.	9
G	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information to the applicant at or prior to the time the application was taken.	10
H	The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing policies with application policy forms that were not filed with the superintendent and that differed from the forms that were filed with the superintendent.	10

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 41.4(e)(2) of 11 NYCRR 41 (Insurance Regulation 143) by failing to include in the application for accelerated death benefits that prior to applying for such benefits, policyowners should seek assistance from a qualified tax advisor.	10
J	The Company violated Section 2611(a) of New York Insurance Law by failing to obtain written informed consent prior to subjecting applicants to HIV related testing.	11
K	The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the fraud warning statement immediately above the space provided for the signature of the person executing the claim form.	11

Respectfully submitted,

James Wang
James Wang
Senior Insurance Examiner

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

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

James Wang
James Wang

Subscribed and sworn to before me
this 13th day of September, 2022
Audrey Hall

AUDREY HALL
Notary Public, State of New York
No. 01HA6274900
Qualified in Kings County
Commission Expires January 28, 2025

Respectfully submitted,

_____/s/
Mostafa Mahmoud
Principal Insurance Examiner

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

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

_____/s/
Mostafa Mahmoud

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 32324

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, **ADRIENNE A. HARRIS**, Acting 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:

JAMES WANG

as a proper person to examine the affairs of the

FIRST SYMETRA NATIONAL 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 1st day of December, 2021

ADRIENNE A. HARRIS
Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

