



MARKET CONDUCT REPORT ON EXAMINATION

OF THE

PROTECTIVE LIFE AND ANNUITY INSURANCE COMPANY

AS OF DECEMBER 31, 2017

EXAMINER:

RORY CUMMINGS

DATE OF REPORT:

MAY 9, 2019

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

November 8, 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. 31772, dated May 31, 2018, and annexed hereto, an examination has been made into the condition and affairs of Protective Life and Annuity Insurance Company, hereinafter referred to as “the Company,” at its home office located at 2801 Highway 280 South, Birmingham, AL 35223.

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

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

1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when it failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Regulation. (See item 4A2 of this report.)
- The Company violated Section 310(a)(2)(3) of the New York Insurance Law by failing to make records and documents readily available and accessible; thereby, failing to facilitate the examination. (See item 4D of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by not having term premium due notices and universal life insufficiency due notices that contain the statement “. . . the policy shall terminate or lapse except as to the right to any cash surrender value or non-forfeiture benefit”. (See item 4C of this report.)
- The Company violated Section 3214(c) of the New York Insurance Law by failing to pay the correct amount of interest paid on proceeds left under the interest settlement option from the date of death to the date of payment. (See item 4C of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2011 through December 31, 2017. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2017 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a review of market conduct activities and utilized the National Association of Insurance Commissioners' *Market Regulations Handbook* or such other examination procedures, as deemed appropriate, in such review.

The examiner reviewed the corrective actions taken by the Company with respect to the market conduct violations and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 5 of this report.

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

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of Alabama under the name of Alabama Foundation Life Insurance Company on November 20, 1978 and commenced business on December 8, 1978. The Company was granted a license by the Department to conduct business in the State of New York on October 3, 1985.

On January 1, 1981, the Company merged with American Sentinel Life Insurance Company, a South Carolina corporation, resulting in the Company being the surviving entity. On October 3, 1983, Protective Life Insurance Company (“PLICO”) purchased 100% of the Company’s common stock. The Company is a wholly-owned subsidiary of PLICO, an insurance company domiciled in Tennessee. PLICO is a wholly-owned subsidiary of the Protective Life Corporation (“PLC”), a Delaware insurance holding company.

On March 1, 1999, the Company adopted the name Protective Life and Annuity Insurance Company (“PLAIC”).

On July 1, 2012, the Company merged with its affiliate, Protective Life Insurance Company of New York (“PLICONY”), as part of a statutory merger. PLICONY was a stock, life and accident & health insurer domiciled in the State of New York. Permission for the merger was received from the New York State Department of Financial Services. The Company remained as the surviving legal entity.

On February 1, 2015, Protective Life Corporation, immediate parent of PLICO and ultimate parent of the Company, was acquired by The Dai-ichi Life Insurance Company, Limited, a kabushiki kaisha (publicly traded company) organized under the laws of Japan.

Effective October 1, 2016, The Dai-ichi Life Insurance Company, Limited reorganized into a holding company structure and changed its name to Dai-ichi Life Holdings, Inc. (“Dai-ichi”), and Dai-ichi contributed substantially all of the assets and liabilities relating to the domestic life insurance business of The Dai-ichi Life Insurance Company, Limited (excluding The Dai-ichi Frontier Life Insurance Co., Ltd. and The Neo First Life Insurance Company, Limited, each being a wholly-owned subsidiary of Dai-ichi), to a new wholly-owned direct subsidiary of Dai-ichi, which was renamed The Dai-ichi Life Insurance Company, Limited.

B. Territory and Plan of Operation

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

The Company is licensed to transact business in 31 states. In 2017, 80.9% of life premiums, 98% of annuity considerations, 96.5% of accident and health premiums and 97.5% of deposit type funds were received from New York. Policies are written on a participating and non-participating basis.

The Company's principal lines of business during the examination period were individual and group annuities, individual life, credit accident and health, and disability. The products marketed during the examination period included fixed and variable annuities, individual life, credit life and disability insurance.

The Company's agency operations are conducted on a general agency basis. The Company's individual life products are solicited by multiple distribution channels including direct to consumer (internet sales), independent agency distribution (general agents and independent producers) and wholesale distribution (broker dealers and financial advisors). The Company's fixed and variable annuities are solicited through independent agency distribution and wholesale distribution channels. The Company's credit life and disability products are solicited by licensed general agents which contract with licensed finance and insurance managers at auto dealerships in New York who offer credit insurance to their customers.

4. MARKET CONDUCT ACTIVITIES

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

A. Advertising and Sales Activities

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

1. Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) states, in part:

“In all advertisements made by an insurer, or on its behalf, the name of the insurer shall be clearly identified, together with the name of the city, town or village in which it has its home office in the United States . . .”

A. The examiner reviewed a sample of 20 advertisements. In 2 out of 20 (10%) files reviewed, the Company did not identify the name of the city, town or village in which it has its home office in the United States on such advertisements.

The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include the name of the city, town or village of its home office in the United States on such advertisements.

The Company was cited for this violation on the previous market conduct examination report.

Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-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.”

B. The examiner reviewed a sample of 20 advertisements. In 1 out of 20 (5%) files reviewed, the Company's advertising file did not include a notation indicating the extent of distribution of the advertisement:

The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to maintain the extent of distribution of each advertisement used and disseminated in New York.

The Company was cited for this violation on the previous market conduct examination report.

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

“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;”

A. In 21 out of 30 (70%) external variable annuity replacements reviewed, where optional living benefits riders were elected, the agent failed to disclose the rider fees or charges in the remarks section of the disclosure statement so that the applicants could make decisions in their own best interests. The agent primarily marketed these replacements due to the optional living benefits.

The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation. 60, Second and Third Amendments) when it failed to establish minimum standards of conduct by ensuring that rider fees were disclosed on the disclosure statement so that full and clear information on which an applicant could make decisions in their own best interests.

Section 51.6 of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) 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;”

B. The examiner reviewed a sample of 40 external life replacements, 10 internal life replacements, 31 internal fixed annuity replacements, 37 external fixed annuity replacements and

30 external variable annuity replacements. The 31 internal fixed annuity replacements included 17 fixed index annuity replacements. The 37 external fixed annuity replacements included 8 fixed index annuity replacements.

- i. In 1 out of 40 (3%) external life replacements reviewed, the agent's statement of the Disclosure Statement was not fully completed. The Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and Regulation.
- ii. In 4 out of 10 (40%) internal life replacements reviewed, different sections of the Disclosure Statement were not answered. The examiner advised the Company that if these sections were not applicable, using the notation N/A or none would be applicable instead of leaving these sections blank. The Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and Regulation.
- iii. In 3 out 30 (10%) external variable annuity replacement reviewed and in 4 out 37 (11%) external fixed annuity replacements reviewed, the information presented on the Disclosure Statement by the agent and listed below were not factual and/or omitted relevant information. The Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and Regulation.
 - a. The agent's comment on the Disclosure Statement indicated that, "Living Benefit R72 allows for income later where income base grows by 7.2% per year for 10 years or until policyholder decides to begin withdrawing (if earlier), even during periods of negative market performance. This could go a long way in providing income for annuitant and his/her spouse if he/she passes away and this was the primary reason for recommending the new annuity contract". The examiner notes that the agent neglected to include the information that this benefit was not applicable if the contract value is less than 50% of the prior year anniversary.
 - b. The agent's comment on the Disclosure Statement indicated that, "Liquidity, guarantee of premium" was an advantage of continuing the existing contract

without changes. The examiner notes that the “guarantee of premium” as an advantage of continuing with exiting contract is not factual as this advantage is not applicable to annuities.

- c. The agent’s comment on the Disclosure Statement indicated that, “Upon renewal, existing contract to receive > 1% would have to be renewed 10 yrs. . . .” and “No potential to increase rate during the 10-yr. renewal period” as the reason why the existing annuity contract cannot meet the applicant’s objective. The Company could not verify the agent’s comment and thus failed to examine and ascertain that the Disclosure statement was accurate and met the requirements of Insurance Law and Regulation.
 - d. The agent did not list the percentage rate of surrender charges of the proposed contract on the Disclosure Statement.
 - e. The agent’s comment on the Disclosure Statement indicated that, “None for current contract does not offer sufficient opportunities to meet the client needs” as an advantage of continuing the existing annuity contract without changes. The examiner notes that the surrender charge period had expired for the replaced Company and could be listed as an advantage of continuing the existing contract.
 - f. The agent’s comment on the Disclosure Statement indicated that, “Client could not renew the contract . . .” as the reason for why the existing annuity contract cannot meet the applicant’s objective. The examiner notes that this statement is not factual as annuity contracts generally do not expire and the Company could not verify the agent’s comment.
 - g. The agent’s comment on the Disclosure Statement indicated that, “No surrender charge assessed and no new surrender charge period on the new account” as an advantage of continuing the existing annuity contract without changes. The examiner notes that the proposed annuity contract does have a surrender charge period.
- iv. In 4 out of 30 (13%) external variable annuity replacement files reviewed where the existing policies were fixed replacement annuities, the minimum guaranteed interest rate was not listed on the Disclosure Statement as an advantage of continuing with the existing annuity contract since variable annuities are subject to market risk. The

Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and Regulation.

- v. In 1 out of 30 (3%) external variable replacement files reviewed where the proposed annuity contract was replacing more than one existing annuity contract, the agent presented the surrender values and death benefit in separate disclosure statements instead of presenting a composite comparison for all existing annuity contracts and the proposed annuity contract. The Company should provide one Disclosure Statement containing separate Summary Result Comparison Section for each existing annuity contract and a composite of all existing annuity contracts to the proposed annuity contract. The agent also failed to list all the existing contracts affected in Section 1 of the Disclosure Statement. Based on the instructions for completing Appendix 10B of Regulation 60, if more than one contract is being replaced and/or being proposed, illustrated values are to be determined as the sum of the values for the individual contracts. The Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and the Regulation.
- vi. In 12 out of 30 (40%) external variable annuity replacements files reviewed, in 31 out of 31 (100%) internal fixed annuity replacement files reviewed, and in 28 out of 37 (76%) external fixed annuity replacement files reviewed, the first- and third-year surrender benefits and death benefits comparisons of the "LICONY" Disclosure Statements were not completed. The Company failed to examine and ascertain that the Disclosure Statements was accurate and met the requirements of the Insurance Law and the Regulation.
- vii. In 14 out of 14 (100%) internal fixed annuity replacements files reviewed and in 29 out of 29 (100%) external fixed annuity replacement files reviewed, the agent did not disclose either in the Agents Statement or in the Remarks section of the Disclosure Statement that the guaranteed interest rate of the contract is guaranteed only for the guaranteed period stated in the contract (usually 1 to 7 years) and not for the life of the contract. The Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and the Regulation.

- viii. In 13 out of 14 (93%) internal fixed annuity replacement files reviewed and in 28 out of 29 (97%) external fixed annuity replacement files reviewed, the guaranteed minimum interest rate of the replaced policy was higher (ranging from 1.1% to 2.8%) than the guaranteed minimum interest rate of the proposed policy which is 1%. The fact that the replaced policy had a higher minimum guaranteed interest rate compared to the proposed policy was not disclosed on the Disclosure Statement as an advantage of continuing with the existing annuity contract". The Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and the Regulation.
- ix. In 4 out of 14 (29%) internal fixed annuity replacement files reviewed, the replaced fixed annuities have higher surrender values and higher death benefits under the five year and ten-year summary comparisons. The agents stated the higher interest rate for the proposed contracts as the reason for the replacements, yet the agents failed to mention that the rates are only guaranteed for the initial six years, and the contract holders would be worse off in the long run based on the numbers shown on the summary comparison section of the Disclosure Statements. The Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and the Regulation.
- x. In 1 out of 37 (3%) external fixed annuity replacement files reviewed, the existing annuity section of the summary result comparison section of the Disclosure Statement was not completed. The Company failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law and the Regulation.
- xi. In 3 out of 37 (8%) external fixed annuity replacements reviewed, the proposed annuity contract surrender values and death benefits were listed individually based on the underlying investment on separate Disclosure Statements instead of composite comparison of all proposed investments surrender values and death benefits on one Disclosure Statement. The Company failed to examine and ascertain that the disclosure statement was complete and met the requirements of the Insurance Law and the Regulation.

The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when it failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Regulation.

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

“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;’ . . .”

C. The examiner reviewed a sample of 30 external variable annuity replacements. In 30 out of 30 (100%) replacements reviewed, the Company failed 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 annuity contract, and the completed Disclosure Statement.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) 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.

Section 51.6 of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) 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, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later;”

D. The examiner reviewed a sample of 40 external life replacements, 10 internal life replacements, 30 external variable annuity replacements, and 37 external fixed annuity replacements. The 37 external fixed annuity replacements included 8 fixed index annuity replacements.

- i. In 1 out of 40 (3%) external life replacements reviewed and in 2 out 30 (7%) external variable annuity replacements reviewed, the Company failed to maintain the completed Disclosure Statements.
- ii. In 1 out of 10 (10%) life replacements reviewed, the Company failed to maintain proof of receipt by the applicant of the Important Notice Regarding Replacement.
- iii. In 10 out 30 (33%) external variable annuity replacements reviewed, the Company failed to maintain the sales materials used in the issuance of variable annuities.
- iv. In 8 out 37 (40%) external fixed annuity replacements reviewed, the Company failed to maintain the sales material used in the issuance of fixed annuities.

The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when it failed to maintain a copy of the completed Disclosure Statement, proof of receipt by the applicant of the Important Notice Regarding Replacement, and sales material.

Section 51.6 of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) 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: ...

(9) In the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised ‘Disclosure Statement’, any revised or additional sales material used and acknowledgement by the applicant of receipt of such revised material.”

E. The examiner reviewed a sample of 40 external life replacements. In 1 out of 40 (3%) replacements reviewed, the Company failed to provide a revised Disclosure Statement to the applicant when the policy issued to the applicant was different from the proposed policy described in the Disclosure Statement because of the face amount revision.

The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when it failed to provide the applicant with a revised disclosure statement when the policy was issued other than as applied for.

3. Section 224.4 of 11 NYCRR 224 (Insurance Regulation 187) states, in part:

“(a) In recommending to a consumer the purchase or replacement of an annuity contract, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer’s investments and other insurance policies or contracts and as to the consumer’s financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following: ...
(f) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s and insurance producers’ compliance with this Part. An insurer may contract with a third party to establish and maintain a system of supervision with respect to insurance producers.
(g) An insurer shall be responsible for ensuring that every insurance producer recommending the insurer’s annuity contracts is adequately trained to make the recommendation. . . .”

To determine the suitability of annuities issued, the examiner reviewed the Company’s Annuity New Business Team procedures and its supervision procedures of third-party producers.

The Company’s supervision procedures require all third-party procedures to certify that all recommendations for annuities made by them or their representatives adhere to the referenced regulations. This is done at the time of initial contracting and on an annual basis thereafter. In review of the Company’s Annuity New Business Team procedures, the examiner determined that the Company have procedures in place to ensure the suitability of the annuities issued. However, the examiner determined that there was no external or independent function to validate the suitability of the annuities issued by third-party producers and the Company’s Annuity New Business Team.

The examiner recommends that the Company schedule annual audits to test the effectiveness of the supervision system of both third-party procedures and the Company’s Annuity New Business Team to verify that annuity recommendations made are suitable for its clients.

The examiners note that the Company implemented updated written procedures for the supervision of third-party producers.

B. Underwriting and Policy Forms

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

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

“ . . . ‘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. . . .”

In 2 out of 30 (7%) external variable annuity replacement files reviewed, the Company used policy form AF-2171 (Roth IRA Disclosure Statement) which was never filed with and approved by the Superintendent.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form that was not filed with the Superintendent.

C. Treatment of Policyholders

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

1. 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.’ ” . . .

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

“Location of warning statements and type size. 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. On claim forms which require execution by a person other than the claimant, or in addition to the claimant, the warning statements required by subdivisions (a), (b) and (e) of this section shall be placed at the top of the first page of the claim form or in the page containing instructions, either in print, by stamp or by attachment and shall be in type size which will produce a warning statement of conspicuous size.”

A. The examiner reviewed samples of 34 annuity death claims. In 10 out of 34 (29%) annuity claims reviewed, the claim forms utilized did not have the required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim form.

B. The examiner reviewed a sample of 10 supplementary contract death claims. In 6 out of 10 (60%) claims reviewed, the claim forms utilized did not have the required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim form. In 4 out of 10 (40%) claims reviewed (40%), the claim form utilized did not contain the required fraud warning statement or did not contain the fraud warning statement.

C. The examiner reviewed a sample of 15 disability paid claims. In 12 out of 15 (80%) claims reviewed, the claim forms utilized did not have the required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim form.

The Company violated Section 403(d) of the New York Insurance Law by failing to include the required fraud warning statement on its claim forms.

The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by using claim forms that did not have the required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim form.

2. 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 non-forfeiture benefit.”

A. In 30 out of 30 (100%) lapsed term life policy files reviewed, the premium due notices sent to policyholders did not contain the statement, “. . .the policy shall terminate or lapse

except as to the right to any cash surrender value or nonforfeiture benefits”. In addition, in 21 out of 21 (100%) lapsed universal life policy files reviewed, the insufficiency notice sent to policyholders did not contain the statement, “. . . the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefits”.

The Company violated Section 3211(b)(2) of the New York Insurance Law by not having term premium due notices and universal life insufficiency due notices that contain the statement “. . . the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit”.

Upon notification, the Company completed a lapse remediation of their term and universal life files. The remediation confirmed 133 insureds died with one year of the non-compliant premium and insufficiency due notices. The Company has paid 82 claims to beneficiaries and escheated 49 claims to the State for claims it could not locate the beneficiaries. In addition, the Company paid 2 claims to a mixture of beneficiaries and the State.

B. In 21 out of 21 (100%) lapsed universal life policy files reviewed, the insufficiency notice did not state the place where the payment should be sent.

The Company violated Section 3211(b)(2) of the New York Insurance Law by distributing insufficiency notices that did not state the place where payments should be made to.

3. Section 3211(g) of the New York Insurance Law states, in part:

In the case of life insurance policies to which this section is applicable and which contain a cash surrender value, the insurer must provide an annual notification that the policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner. . . .”

The examiner reviewed a sample of 20 ordinary life in-force policies files. In 5 out of 20 (25%) files reviewed, the Company failed to provide to the policyholder an annual notification that these policies contained cash surrender value.

The Company violated Section 3211(g) of the New York Insurance Law by failing to provide an annual notification to policyholder that their policies contain cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request.

4. 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 policyholder 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 the 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.”

A. The examiner reviewed a sample of 42 individual life death claims. In 2 out of 42 (5%) death claims reviewed, the Company underpaid the interest on proceeds left under the interest settlement option.

B. The examiner reviewed a sample of 34 annuity death claims. In 25 out of 34 (74%) death claims reviewed, the Company failed to pay interest on proceeds left under the interest settlement option. In lieu of the statutory rate, the Company noted that the contractual interest rate accrued on the contract until the date the claim was processed. However, for the 25 annuity claims cited, the review found the contractual rate fell below the statutory rate and or the contractual rate was not paid from date of death to date of payment.

C. The examiner reviewed a sample of 10 supplementary contract death claims. In 9 out of 10 (90%) death claims reviewed, the Company either did not pay or underpaid the interest on proceeds left under the interest settlement option.

D. The examiner reviewed a sample of 6 annuity escheatment death claims. In 3 out of 6 (50%) claims files reviewed, the Company did not pay interest on proceeds left under the interest settlement option.

E. The examiner reviewed a sample of 22 death match index inventory claims. In 5 out of 22 (23%) claims files reviewed, the company either didn't pay or underpaid interest from the date of the death to the date of payment on proceeds left under the interest settlement option.

The Company violated Section 3214(c) of the New York Insurance Law by failing to pay the correct amount of interest paid on proceeds left under the interest settlement option from the date of death to the date of payment.

The Company was cited for this violation on the previous report on market conduct examination.

5. Section 3240 of the New York Insurance Law states, in part:

“(f) Standards for locating claimants. (1) An insurer shall establish procedures to reasonably confirm the death of an insured or accountholder and begin to locate beneficiaries within ninety days after the identification of a potential match made by a death index cross-check or by a search conducted by the insurer pursuant to subsection (e) of this section. If the insurer cannot locate beneficiaries within ninety days after the identification of a potential match, then the insurer shall continue to search for beneficiaries until the benefits escheat in accordance with applicable state law . . .”

The examiner selected a sample of 35 policies from the Company’s in-force supplementary contracts where the insureds’ attained age was 90 and above. In 1 out of 35 (3%) in-force supplementary contracts (life contingency) files reviewed, the Company did get the match per the death index cross-check but failed to reasonably locate the beneficiaries.

The Company violated Section 3240(f)(1) of the New York Insurance Law by failing to reasonably locate beneficiaries of accountholder within ninety days after identification of a potential match.

6. Section 216.6 of 11 NYCRR 216 (Insurance Regulation 64) states, in part:

“(a) In any case where there is no dispute as to coverage, it shall be the duty of every insurer to offer claimants, or their authorized representatives, amounts which are fair and reasonable as shown by its investigation of the claim, providing the amounts so offered are within policy limits and in accordance with the policy provisions. . . .

(c) Within 15 business days after receipt by the insurer of a properly executed proof of loss and receipt of all items, statements and forms which the insurer requested from the claimant, or the claimant's authorized representative, shall be advised in writing of the acceptance or rejection of the claim by the insurer. . . .”

A. The examiner reviewed a sample of 34 annuity death claims. In 1 out of 34 (3%) death claims reviewed, the Company failed to advise the claimant in writing within 15 days of the receipt of a properly executed proof of loss and the receipt of all items, statements and forms, of the acceptance or rejection of the claim.

The Company violated Section 216.6(c) of 11 NYCRR 216 (Insurance Regulation 64) by failing to provide notice of acceptance or rejection of annuity death claims within 15 business days of receipt of a properly executed proof of loss.

7. Section 243.3 of 11 NYCRR 243 (Insurance Regulation 152) states, in part:

“(a)(1) Records and indices of records required to be maintained under this Part may be maintained in any durable medium.

(2) Where the original record was not a paper document, an insurer shall be able to produce information or data which accurately represents a record of communications between a person or entity and the insurer or accurately reflects a transaction or event. . . .”

A. The examiner reviewed a sample of 34 individual annuity death claims. In 24 out of 34 (71%) death claims reviewed, the company failed to furnish the account value of the annuity on the date of death. In lieu of a screenshot or copy of the administrative system showing the account value on the date of death, the Company provided a worksheet showing the calculation of the account value on the date of death by using the previous month end date account value.

The Company violated Section 243.3(a)(2) of 11 NYCRR 243 (Insurance Regulation 152) by failing to provide information or data that accurately reflects a transaction or event.

D. Non-facilitation of the Examination

Section 310(a) of the New York Insurance Law states, in part:

“(2) Any examiner authorized by the superintendent shall be given convenient access at all reasonable hours to the books, records, files, securities and other documents of such insurer or other person, including those of any affiliated or subsidiary companies thereof, which are relevant to the examination, and shall have power to administer oaths and to examine under oath any officer or agent of such insurer or other person, and any other person having custody or control of such documents, regarding any matter relevant to the examination.

(3) The officers and agents of such insurer or other person shall facilitate such examination and aid such examiners in conducting the same so far as it is in their power to do so.

(4) The refusal of any insurer to submit to examination shall be grounds for revocation or refusal of a license or renewal license.” . . .

The Market Conduct examinations of PLAIC and MONY Life Insurance Company (“MONY”) were delayed periodically due to the Companies’ refusal or inability to provide responses to both pre-examination and examination requests timely which impeded the completion of the examination. The market conduct examination was conducted concurrently with MONY, an affiliate Company. The Company was cited in two instances for not facilitating the examination.

The first instance was the result of not providing pre-examination data timely. In advance of both examinations, the Department requested that the Company prepare certain data files, covering the period of January 1, 2011, through December 31, 2017. The data requested was to be used to verify the validity of the underlying data supporting the annual statement exhibits. The Department also requested that some of the data files, such as those for claims and surrender benefits, be reconciled to the annual statement exhibits in advance of the examiner's selection of samples to review for the market conduct examination.

The second instance was the result of not providing examination request timely. Throughout the examination the Company was granted extensions to provide responses to examination requests and were additionally warned that not providing responses timely to examination request constitutes non-facilitation of examination.

The Company violated Section 310(a)(2)(3) of the New York Insurance Law by failing to make records and documents readily available and accessible; thereby, failing to facilitate the examination.

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations 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 1505(d)(3) of the New York Insurance Law by failing to notify the Superintendent 30 days prior to affiliates rendering services on a regular or systematic basis.</p> <p>The Company did not execute any service agreements during the current examination.</p>
B	<p>The examiner recommends that the Company enter into a written agreement with PLIC for the rendering of the credit life and accident and health services and submit such agreement to the Superintendent pursuant to Section 1505(d)(3) of the New York Insurance Law.</p> <p>The Company entered into an updated Administrative Service Agreement with PLIC for the servicing of any line of the Company's business. The agreement was submitted to the Superintendent pursuant to Section 1505(d)(3) of the New York Insurance Law and complied with the standards set forth in Section 1505(a) and (b) of the New York Insurance Law</p>
C	<p>The Company violated Section 216.4(c) of 11 NYCRR 216 (Insurance Regulation 64) by failing to appoint a corporate officer as the Company's consumer services officer.</p> <p>The Company appointed a corporate officer as the Company's consumer services officer during the current examination.</p>
D	<p>The Company violated Section 2108(a)(3) of the New York Insurance Law by allowing third party administrators to act on behalf of the Company without being licensed as independent adjusters.</p> <p>All third-party administrators acting on behalf of the Company during the current examination were licensed as independent adjusters.</p>
E	<p>The Company violated Section 1313(f) of the New York Insurance Law by including a statement which called attention to the financial condition of the holding company system in advertisements without including a statement of the separate financial condition of the Company.</p>

<u>Item</u>	<u>Description</u>
	The Company updated their advertisement guidelines to ensure that all statements which called attention to the financial condition included a statement of the separate financial condition of the Company. The examiner did not uncover any advertisement which called attention to the financial condition of the holding company system without the requisite statement about the financial condition of the Company
F	The Company violated Section 2122(a)(2) by calling attention to an unauthorized insurer in its advertisements. The examiner's advertisement review did not uncover any advertisement that called attention to any unauthorized insurer during the current examination.
G	The Company violated Section 215.13(a) of 11 NYCRR 215 (Insurance Regulation 34) by failing to identify the form number in its accident and health advertisements. The examiner's advertisement review did not uncover any advertisement that failed to identify the form number on the accident and health advertisement during the current examination.
H	The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to identify the city, town or village of the Company's home office in its advertisements. The Company failed to take corrective action in response to this prior report violation. (See item 4A of this report.)
I	The Company violated Section 219.4(w) of 11 NYCRR 219 (Insurance Regulation 34-A) by utilizing an advertisement without the appropriate asterisk referring the reader to a full rate schedule. The current examination did not uncover any advertisement that did utilize an asterisk.
J	The Company violated Section 215.17(a) of Department Regulation No. 34 and Section 219.5(a) of Department Regulation No. 34-A by failing to maintain a complete advertising file. The examiner's review of advertisements revealed no issues with respect to Section 215.17(a) of Insurance Regulation 34; however, the Company failed to take corrective action in response to this prior report violation for Section 219.5(a) of Insurance Regulation 34-A. (See item 4A of this report.)

<u>Item</u>	<u>Description</u>
K	<p>The Company violated Section 3214(c) of the New York Insurance Law by failing to pay interest on death claims from the date of the death of the insured or annuitant until the date of payment and by utilizing a rate lower than the interest rate paid on proceeds left under the interest settlement option for death claims on life insurance policies.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 4C of this report.)</p>

6. SUMMARY AND CONCLUSIONS

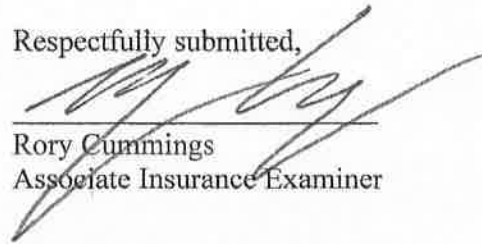
Following are the violations and recommendation contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include the name of the city, town or village of its home office in the United States on such advertisements.	6
B	The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to maintain the extent of distribution of each advertisement used and disseminated in New York.	7
C	The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation. 60, Second and Third Amendments) when it failed to establish minimum standards of conduct by ensuring that rider fees were disclosed on the disclosure statement so that full and clear information on which an applicants could make decisions in their own best interests.	7
D	The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when it failed to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Regulation.	12
E	The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) 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.	12
F	The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when it failed to maintain a copy of the completed Disclosure Statement, proof of receipt by the applicant of the Important Notice Regarding Replacement, and sales materials.	13
G	The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) when it failed to provide the applicant with a revised disclosure statement when the policy was issued other than as applied for.	14

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The examiner recommends that the Company schedule annual audits to test the effectiveness of the supervision system of both third-party procedures and the Company's Annuity New Business Team to verify that annuity recommendations made are suitable for its clients.	14
I	The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form that was not filed with the Superintendent.	15
J	The Company violated Section 403(d) of the New York Insurance Law by failing to include the required fraud warning statement on its claim forms.	16
K	The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by using claim forms that did not have the required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim form.	16
L	The Company violated Section 3211(b)(2) of the New York Insurance Law by not having term premium due notices and universal life insufficiency due notices that contain the statement “. . . the policy shall terminate or lapse except as to the right to any cash surrender value or non-forfeiture benefit”.	17
M	The Company violated Section 3211(b)(2) of the New York Insurance Law by distributing insufficiency notices that did not state the place where payments should be made to.	17
N	The Company violated Section 3211(g) of the New York Insurance Law by failing to provide an annual notification to policyholder that their policies contain cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request.	17
O	The Company violated Section 3214(c) of the New York Insurance Law by failing to pay the correct amount of interest paid on proceeds left under the interest settlement option from the date of death to the date of payment.	18
P	The Company violated Section 3240(f)(1) of the New York Insurance Law by failing to reasonably locate beneficiaries of accountholder within ninety days after identification of a potential match.	19

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
Q	The Company violated Section 216.6(c) of 11 NYCRR 216 (Insurance Regulation 64) by failing to provide notice of acceptance or rejection of annuity death claims within 15 business days of receipt of a properly executed proof of loss.	19
R	The Company violated Section 243.3(a)(2) of 11 NYCRR 243 (Insurance Regulation 152) by failing to provide information or data that accurately reflects a transaction or event.	20
S	The Company violated Section 310(a)(2)(3) of the New York Insurance Law by failing to make records and documents readily available and accessible; thereby, failing to facilitate the examination.	21

Respectfully submitted,


Rory Cummings
Associate Insurance Examiner

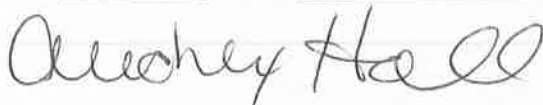
STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

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


Rory Cummings

Subscribed and sworn to before me

this 8th day of November 2022



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. 31772

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:

RORY CUMMINGS

as a proper person to examine the affairs of the

PROTECTIVE LIFE AND ANNUITY 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 31st day of May, 2018

MARIA T. VULLO
Superintendent of Financial Services

By: Mark McLeod
MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

