MARKET CONDUCT REPORT ON EXAMINATION

OF THE

BRIGHTHOUSE LIFE INSURANCE COMPANY OF

NEW YORK

AS OF DECEMBER 31, 2019

EXAMINER: **JAMES WANG**

DATE OF REPORT: **JUNE 30, 2021**

TABLE OF CONTENTS

April 7, 2023

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. 32070, dated April 16, 2020, and annexed hereto, an examination has been made into the condition and affairs of Brighthouse Life Insurance Company of New York, hereinafter referred to as "the Company". The Company's home office is located at 285 Madison Avenue, New York, NY 10017. The examination was conducted remotely because of the COVID-19 pandemic.

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, comment, violations and recommendations contained in this report are summarized below.

- The Company violated Section 219.4(a)(1) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to produce advertisements of its shield annuity product that are sufficiently complete and clear so that it is neither misleading nor deceptive, nor has the capacity or tendency to mislead or deceive. The Company violated Section 219.4(c) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the word "guarantee" in a context that is deemed to be misleading and capable of being deceptive. The Company violated Section 219.4(d) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the word "minimum" in a context that is deemed to be misleading and capable of being deceptive. (See item 4A of this report.)
- The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to make available full and clear information on which an applicant for life insurance or annuities can make a decision in the applicant's best interest. The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to examine the sales material, including any proposal, used in the sale of the life insurance policies or annuity contracts, and the "Disclosure Statement", and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations. The Company violated Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by engaging in practices that prevented the orderly working of the Regulation in accomplishing its intended purpose in the protection of policyholders and contract holders. The Company violated Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, 3rd 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 of this report.)
- The Company violated Section 51.6(a)(2) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to provide a completed "Definition of Replacement" signed by the applicant and insurance agent or broker during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur. The

Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to provide a completed "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur. The Company violated Section 51.6(b)(5) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to complete a "Disclosure Statement" signed by the agent during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur. (See item 4A of this report.)

- The Company violated Section 224.4 of 11 NYCRR 224 (Insurance Regulation 187 prior to August 1, 2019) by failing to have reasonable grounds for believing that the replacement 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 during the processing of subsequent deposits to existing annuity contracts. (See item 4A of this report.)
- The Company violated Section 224.1(b) of 11 NYCRR 224 (Insurance Regulation 187 after August 1, 2019) by failing to reasonably inform of the potential consequences of the in-force transaction, both favorable and unfavorable to the consumer during the processing of subsequent deposits to existing annuity contracts. (See item 4A of this report.)
- The Company violated Section 224.4(f) of 11 NYCRR 224 (Insurance Regulation 187) by failing to implement an adequate system of supervision to determine whether the producer properly considered the unique features of the indexed annuity product in the producer's suitability analysis. The examiner recommends that the Company develop a suitability form specific to the indexed shield annuity product for use going forward. (See item 4A of this report.)
- The Company violated Section 243.2(b) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain the policy record that is necessary for reconstructing the solicitation, rating and underwriting of annuity contracts. The Company violated its own service agreements with Capital One Investing and Stanley Monroe by failing to obtain, within 30 days after the effective date of termination, all records in their possession which have been

specifically maintained in connection with the Company's operations related to the annuity contracts. The examiner recommends that the Company adhere to the provisions of its service agreements and obtain all its records from the producers in a timely manner. (See item 4A of this report.)

- The Company violated Section 53-3.3(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by not clearly labeling mid-point and current values in its numeric summary as non-guaranteed. The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by not providing a copy of the illustration to the applicant on or before the date of application and by not providing a revised illustration to the applicant at the time of policy delivery. (See item 4B of this report.)
- The Company violated Section 3209(b)(2)(A) of the New York Insurance Law by failing to print the required statement in bold type. (See item 4B of this report.)
- The Company violated Section 3230(c) of the New York Insurance Law by paying accelerated death benefits to a policyowner in less than a period of five days from the date on which the illustration was transmitted to the policyowner. The Company violated Section 3230(d) of the New York Insurance Law by failing to provide an illustration to the policyowner within five days from receipt of an application for accelerated benefits. The examiner recommends that the Company fill in the Date of the Form field in its instruction sheet of the accelerated death benefit claim package. (See item 4C of this report.)
- The examiner recommends that, going forward, the Company amend its claim forms to make it clear that the Retained Asset Account is not the default payment option in New York. (See item 4C of this report.)
- The Company failed to maintain its complaint log in the format outlined in Insurance Circular Letter No. 11 (1978) during the examination period. The Company violated Section 216.4(b) of 11 NYCRR 216 (Insurance Regulation 64) by failing to make an appropriate reply within 15 business days of the receipt of complaints. (See item 4C of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices 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 Company violated

Section 3211(a)(1) of the New York Insurance Law by failing to mail the notices at least fifteen and not more than forty-five days prior to the day when such payment becomes due. The examiner recommends that the Company print on the front of the payment notice, not on the back page of the notice, the required disclosure 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 nonforfeiture benefit. The examiner also recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies in which the insured's death occurred within one year of the date each policy lapsed. (See item 4C of this report.)

- The Company violated Section 3240(f)(1) of the New York Insurance Law by failing to establish procedures to reasonably confirm the death of an insured or accountholder. The Company violated the Section 3240(d)(4) of the New York Insurance Law and Section 226.4(e) of 11 NYCRR 226 (Insurance Regulation 200) by failing to establish reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, leading to the failure to effectively run thousands of policies against the SSDMI. The examiner recommends that the Company investigate its in-force for all lines of business, for the period under examination, to determine whether there are other instances in which the insured is deceased. The examiner further recommends that, for these cases, the Company start the death claim process for these deceased insureds and remove them from the in-force inventory once payments of the death benefits are made. (See item 4C of this report.)
- The Company violated Section 226.6 of 11 NYCRR 226 (Insurance Regulation 200) by failing to file copies of the Abandoned Property reports with the superintendent. (See item 4C of this report)
- The Company violated Section 3214(c) of the New York Insurance Law by failing to pay the amount of interest that was computed daily at the Company's rate of interest from the date of death to the date of payment. The examiner recommends that the Company amend its claims procedures to ensure that the interest settlement rate that is used on death benefits paid for all its annuity products is consistent with Section 3214 of the New York Insurance Law. (See item 4C of this report.)

- The examiner recommends that the Company schedule and perform regular annual internal audits of its market conduct functions. (See item 4D of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2014, to December 31, 2019. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2019, 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 action taken by the Company with respect to the market conduct violation 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 originally incorporated as a stock life insurance company under the laws of New York on December 31, 1992, under the name First Xerox Life Insurance Company, and was licensed and commenced business on March 12, 1993.

In April 1993, Wausau Underwriters Life Insurance Company, a stock life insurance company domiciled in Wisconsin and licensed to write business in Wisconsin and New York, was merged with and into the Company; the Company was the surviving corporation. In May 1995, the Company and its then direct parent, Xerox Financial Services Life Insurance Company, were purchased by General American Life Insurance Company ("GALIC"). In June 1995, the names of the Company and its immediate parent were changed to First Cova Life Insurance Company and Cova Financial, respectively.

In January 2000, GenAmerica Financial Corporation, the parent of GALIC, and its holdings, including Cova Financial and First Cova Life Insurance Company, were acquired by Metropolitan Life Insurance Company ("MLIC"), which then became a subsidiary of MetLife, Inc. ("MetLife") following MetLife's demutualization in April 2000. In February 2001, the names of the Company and its immediate parent were changed to First MetLife Investors Insurance Company ("FMLI") and MetLife Investors Insurance Company ("MLIIC"), respectively.

In December 2002, GALIC sold Cova Corporation, the parent of MLIIC, to MetLife. On October 1, 2004, the Company was also sold to MetLife, by its parent, MLIIC, at which time the Company became a direct subsidiary of MetLife. Initial resources of $6,501,272, consisted of common capital stock of $2,000,000, including 200,000 shares of common stock with a par value of $10 per share, and additional paid in and contributed surplus of $4,501,272.

On January 12, 2016, MetLife announced its plan to pursue the separation of a substantial portion of its U.S. retail business (the "Separation"). Additionally, on July 21, 2016, MetLife announced that the separated business would be rebranded as "Brighthouse Financial."

Effective March 6, 2017, and in connection with the Separation, FMLI changed its name to Brighthouse Life Insurance Company of New York (the "Company"). The Company is domiciled in the state of New York and licensed to transact insurance business only in New York. The Company offers a range of individual annuities and individual life insurance products in New

York. The annuities segment consists of a variety of variable, fixed, index-linked, and income annuities. The life insurance segment consists of a variety of universal life insurance, conversion whole life, and term products.

Until the completion of the Separation on August 4, 2017, Brighthouse Financial, Inc. ("BHF") was a wholly-owned subsidiary of MetLife. MetLife undertook several actions, including an internal reorganization involving its U.S. retail business (the "Restructuring"), to include the Company and certain affiliates in the separated business. In connection with the Restructuring, effective April 29, 2017, following receipt of applicable regulatory approvals, MetLife contributed the Company and certain affiliated reinsurance companies to Brighthouse Life Insurance Company ("BLIC"), resulting in the Company becoming a direct wholly-owned subsidiary of BLIC. Subsequently, on April 29, 2017, MetLife contributed BLIC and certain affiliated companies to Brighthouse Holdings, LLC ("BH Holdings"), resulting in the Company becoming an indirect wholly-owned subsidiary of BH Holdings. On July 28, 2017, MetLife contributed BH Holdings to BHF (the "Contribution Transactions"), resulting in the Company becoming an indirect wholly-owned subsidiary of BHF. On August 4, 2017, MetLife completed the Separation through a distribution of 96,776,670 of the 119,773,106 then outstanding shares of BHF common stock, representing 80.8% of MetLife's interest in BHF, to the holders of MetLife common stock.

As of December 31, 2018, the Company had capital stock of $2,000,000, gross paid in and contributed surplus of $395,327,949, and total surplus of $277,205,684 net of unassigned funds. On June 14, 2018, MetLife divested its remaining shares of BHF common stock.

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 only New York. Policies are written on a non-participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2019:

Life Insurance Premiums		Annuity Considerations	
New York	90.1%	New York	98.4%
New Jersey	1.9	New Jersey	0.6
Florida	1.6	Florida	0.5
Connecticut	1.6	Pennsylvania	0.1
California	0.8	Connecticut	0.1
Subtotal	96.0%	Subtotal	99.7%
All others	4.0	All others	0.3
Total	100.0%	Total	100.0%

The Company sells its major products through two primary distribution channels: the Brokerage General Agency ("BGA") Channel and the Selling Agreement Channel. These channels are not affiliated with the reporting companies.

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. Sections 219.4(a), (c) and (d) of 11 NYCRR 219 (Insurance Regulation 34-A) state, in part:

   "(a)(1) Advertisements shall be truthful and not misleading in fact or in implication. The format and content of an advertisement of a life insurance policy or annuity contract shall be sufficiently complete and clear so that it is neither misleading nor deceptive, nor has the capacity or tendency to mislead or deceive. Statements made should not cloud or misdirect the consideration of the purchaser . . .
   (c) The use of the terms instant, savings, guaranteed cost, guaranteed renewable, non-cancellable, deposit, investment, or words of similar import, or phrases which include such words, may, in the context used, be deemed to be misleading and capable of being deceptive.
   (d) The use of the terms just, only, merely, necessary, minimum, or words of similar import, may, in the context used to describe any limitation or exclusion, be deemed to be misleading and capable of being deceptive . . . "

The examiner reviewed a sample of advertisements for the Company's Shield Level Select Indexed Annuity. This annuity is a single premium deferred annuity that includes a "Maximum Growth Opportunity" ("MGO") that is also referred to as the cap rate. The cap rate is the maximum rate that can be credited on the term end date based on the performance of the index. This annuity also contains a shield component that represents the amount of any negative index performance that is absorbed by the issuing company at the end of the term of the annuity. This component becomes effective when the contract incurs a negative performance at a rate that exceeds the shield rate.

The examiner's review of a sample of 50 Shield Level Select Indexed Annuity advertisements, revealed that in 5 (10%) advertisements, the advertisement indicated that the annuity contained a minimum guarantee MGO. To state that there is a "minimum guarantee" to what is supposed to be a cap rate, especially when displayed so prominently, can mislead the consumer by giving the consumer the impression that the annuity's cap rate includes a minimum guarantee contract value.

The Company violated Section 219.4(a)(1) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to produce advertisements of its shield annuity product that are sufficiently complete and clear so that it is neither misleading nor deceptive, nor has the capacity or tendency to mislead or deceive.

The Company violated Section 219.4(c) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the word "guarantee" in a context that is deemed to be misleading and capable of being deceptive.

The Company violated Section 219.4(d) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the word "minimum" in a context that is deemed to be misleading and capable of being deceptive.

2. Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) states:

> "protect the interests of the public by establishing minimum standards of conduct to be observe 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."

Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, 3rd 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) 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 regulations . . ."

Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation - 60) states, in part:

"No insurer, insurance agent . . . shall fail to comply with or engage in other practices that would prevent the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contract holders. Any person failing to comply with this Part, or engaging in other practices that would prevent the orderly working of this Part, shall be subject to penalties under the Insurance Law, which may include monetary restitution, restoration of policies or contracts, . . . and monetary fines."

(1). In 10 out of 20 (50%) life replacement transactions reviewed, the Disclosure Statements contained various errors such as:

a. Incorrect premium amount presented for the replaced policy.
b. The box indicating that approximation was used (because the replaced company failed to provide the information) was checked; however, the Disclosure Statement failed to state the approximated premium amount for the replaced contract. Furthermore, the agent statement indicated that the replacing policies were cheaper, but the Company was unable to provide any evidence for the premium of the replaced policies.
c. The agent statement indicated that the advantage of continuing the policy as "None" or "There is no advantage", but that is not a true statement because the replaced contract's contestability period had expired.
d. The agent statement was vague on the reasons for recommending the new life insurance policy. The agent statement should disclose the reasons why the new policy is more beneficial to the policyholder rather than stating the reason for recommending new policy is "to replace the old policy".
e. The agent did not prepare a composite disclosure statement when multiple policies were replaced.

(2). In 14 out of 20 (70%) life replacement transactions reviewed, the policy stated the policyowner has the right to return the policy within 10 days from the date of delivery of such policy.

(3). A review of a sample of 87 indexed annuity replacements revealed that in all cases (100%):

a.) The Regulation 60 comparisons did not reflect the product being sold to the consumers by not including the current cap rates and the accrued cap rate at the time of purchase. The illustrations compared the prior product and the Company's indexed annuity as both earning 12% for 5 and 10 years; however, due to the maximum cap rates for the Company's indexed annuity, the indexed annuity projections of 12% for 5 and 10 years are unattainable.

b.) The Company failed to disclose to the consumers that they would lose the potential opportunity to participate in the dividends paid on the securities by the replacement transactions.

(4). A review of the sample of 87 indexed annuity replacements revealed that in 33 cases (37.9%), the agent statement stated that the reason for the replacement is because the indexed annuity has no expenses or no fees. The examiner determined that this is not a true statement because the fees and expenses of the indexed annuity products are bundled into the consideration of the annuity's cap rates and the fact that the consumers lost their opportunity to participate in the dividends paid on the securities.

(5). A review of a sample of 61 internal indexed/variable annuity replacements revealed that:

a.) In 33 cases (54.1%), the Company failed to disclose to the prospective customers in the "Disclosure Statements" that the customer was forfeiting an opportunity to invest in a guaranteed fixed interest account. The existing variable annuity contracts offered the client a fixed interest account as an investment option at no additional cost. Unlike other investment options offered in the Company's indexed/variable annuity products, the fixed interest account guaranteed principal and interest on the amounts invested while providing a safe, conservative investment option. None of the proposed indexed/variable annuities offered the fixed interest account option.

b.) In 14 cases (23.0%), the Company failed to disclose to the customers in the "Disclosure Statement" that the proposed indexed/variable annuity would

reduce or eliminate important features in the applicant's existing variable annuity contract, such as guaranteed income benefits and death benefit annual step up benefits available under the existing annuity contracts.

c.) In two cases (3.28%), the replaced annuity contracts contained annual step-up death benefit riders. The annual step-up death benefit locks in a higher death benefit value if there is a downturn in market performance. Therefore, the existing annuity contract death benefit amount for year 5 and year 10 under 0% return assumption cannot be less than the current annuity value. The calculators used to produce the hypothetical values shown in the Summary Result Comparison section of the Disclosure Statement were understated for the existing variable annuity death benefits because the values did not properly factor in the locked-in death benefit feature.

(6). A review of a sample of 56 variable annuity replacements revealed that in all cases (100%), the proposed annuity contracts contained mortality and expense risk charges, administrative fees and/or rider charges that may reduce potential cash values. Such fees were not disclosed as required by Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60).

(7). A review of a sample of 143 indexed/variable annuity replacements revealed that in 7 cases (4.89%), the agent statements contained vague or misleading statements such as: (a). the existing contract's 7-year surrender penalty period passed already when in fact the contract is still subject to surrender charges; (b). the existing contract does not offer a death benefit when in fact the existing contract did offer a death benefit; (c). there are gaps between the existing contract's current value and the guaranteed minimum death benefit when in fact the information provided by the replaced company does not show any difference; (d). the advantage of continuing the existing contract as "None", yet the existing contract's surrender period has already passed; (e). the existing annuity contract is not available when in fact only the step-up option is not available; and (f). there is a higher lifetime

income benefit at age 80 for the proposed policy, but in fact there is a higher lifetime income benefit only if the contract value is not reduced to zero.

(8). A review of a sample of 11 replacements involving new single premium immediate annuities ("SPIA") revealed the following:

a) The Company erroneously accepted Disclosure Statements in which the replaced company's account values were listed as a lump sum rather than the monthly payment amount that the policyholder would receive with an immediate annuity. In these instances, the Company did not request, from the existing insurer, an appropriate comparison for the proposed SPIA.

b) The Disclosure Statement did not disclose that a disadvantage of the proposed annuity is that it cannot be surrendered for a lump sum cash value.

The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to make available full and clear information on which an applicant for life insurance or annuities can make a decision in the applicant's best interest.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to examine the sales material, including any proposal, used in the sale of the life insurance policies or annuity contracts, and the "Disclosure Statement", and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations.

The Company violated Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by engaging in practices that prevented the orderly working of the Regulation in accomplishing its intended purpose in the protection of policyholders and contract holders.

3. Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, 3rd 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."

In 14 out of 20 (70%) life replacement transactions reviewed, the policy stated that the policyowner has the right to return the policy within 10 days from the date of delivery of such policy.

The Company violated Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, 3rd 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.

4. Section 51.6(a)(2) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) states, in part:

   " . . . require with or as part of each application, a completed 'Definition of Replacement' signed by the applicant and insurance agent or broker . . . "

   Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) states, in part:

   " . . . 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 . . . '"

   Section 51.6(b)(5) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) states, in part:

   " . . . deliver the completed 'Disclosure Statement' to the policy or contract holder no later than the time of delivery of the policy or contract . . . "

   Office of General Counsel ("OGC") opinion issued June 2, 2004, states:

   " . . . It is our view that with respect to subsequent transfers of life insurance or annuities, Regulation 60 applies where it is known to the Department licensee that the new life insurance or new annuities to be purchased would, or are likely to, replace an existing life insurance policy or an annuity contract, except as exempted in § 51.3 . . . "

   Section 224.1 of 11 NYCRR 224 (Insurance Regulation 187, after August 1, 2019) states that:

   "This Part shall apply to any transaction or recommendation with respect to a proposed or in-force policy."

Section 224.1(b) of 11 NYCRR 224 (Insurance Regulation 187 after August 1, 2019) states in part:

"(b). The producer, or insurer where no producer is involved, acts in the best interest of the consumer when: . . .
(2) there is a reasonable basis to believe the consumer has been reasonably informed of the relevant features of the policy and potential consequences of the in-force transaction, both favorable and unfavorable."

A review of the Company's annuity replacements indicated that there are 87 subsequent premium deposits from other insurance companies revealed the following:

(1). In 6 out of 87 (6.90%) cases, the policy files did not contain a signed Definition of Replacement form for the subsequent transfer transaction.

(2). In 6 out of 87 (6.90%) cases, either the Definition of Replacement form or the Transfer of Asset Request indicated that the Company was aware that the subsequent transfer transaction should be considered a replacement transaction; however, the files did not contain a signed "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" and a completed Disclosure Statement.

(3). In 24 out of 87 (27.59%) cases, the examiners' communication with the replaced companies indicated that the transactions were coming from an individual annuity contract. Therefore, Regulation 60 would apply in these cases; however, the files did not contain the signed "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" and the completed Disclosure Statements.

(4). In 7 out of 87 (8.05%) cases, the Company did not obtain and maintain the suitability workpapers for the subsequent purchases' transactions. Without the suitability workpapers, the examiners had no reasonable basis to believe that the consumers were informed of the potential consequences of the in-force transactions, whether favorable or unfavorable.

The Company violated Section 51.6(a)(2) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to provide a completed "Definition of Replacement" signed by the applicant and insurance agent or broker during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur.

The Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to provide a completed "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur.

The Company violated Section 51.6(b)(5) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to complete a "Disclosure Statement" signed by the agent during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur.

The Company violated Section 224.4 of 11 NYCRR 224 (Insurance Regulation 187 prior to August 1, 2019) by failing to have reasonable grounds for believing that the replacement 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 during the processing of subsequent deposits to existing annuity contracts.

The Company violated Section 224.1(b) of 11 NYCRR 224 (Insurance Regulation 187 after August 1, 2019) by failing to reasonably inform of the potential consequences of the in-force transaction, both favorable and unfavorable to the consumer during the processing of subsequent deposits to existing annuity contracts.

5. Section 224.4(f) of 11 NYCRR 224 (Insurance Regulation 187) stated in part that:

   "An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and insurance producers' compliance with this Part . . . "

A review of eight (8) indexed annuity suitability forms prepared by Stanley Monroe indicated that in all cases, the suitability form that the insurer is requiring the producer to use did not in any way address the unique features of the indexed annuity products. Furthermore, the Company does not have an adequate system of supervision in place to determine whether the producer properly considered these unique features of the indexed annuity products in the producer's suitability analysis.

The Company violated Section 224.4(f) of 11 NYCRR 224 (Insurance Regulation 187) by failing to implement an adequate system of supervision to determine whether the producer properly considered the unique features of the indexed annuity product in the producer's suitability analysis.

The examiner recommends that the Company develop a suitability form specific to the indexed shield annuity product for use going forward.

Section 243.2(b) of 11 NYCRR 243 (Insurance Regulation 152) states

> " Except as otherwise required by law or regulation, an insurer shall maintain:
> (1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. Policy records need not be segregated from the policy records of other states as long as they are maintained in accordance with the provisions of this Part. A separate copy need not be maintained in an individual policy record, provided that any data relating to a specific contract or policy can be retrieved pursuant to section 243.3(a) of this Part. A policy record shall include: . . .
>
> (iv) other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy."

The Service Agreement between Capital One Investment, Stanley Moore and the Company states, in part:

> "X. General Provisions
> A. Term and Termination
> 3. Continuing Operations
> Broker shall return to Company, within 30 days after the effective date of termination, any and all records in its possession which have been specifically maintained in connection with Company's operations related to the Contracts."

The Company's agreement with Capital One Investment Services was terminated in 2015 and was succeeded by Capital One Investing, LLC ("Capital One Investing"). The Company's agreement with Capital One Investing was also terminated in 2019. Stanley Monroe was merged into a new entity named ImpactU Investments in 2018. The Company did not have a selling agreement with ImpactU Investments. A review of the Company's suitability function revealed that the Company was unable to produce any suitability documentation for three annuity contracts sold by Capital One Investment Services. The Company finally obtained the suitability documentation from Stanley Monroe through its affiliate Vanderbilt Securities and the suitability documentation from Capital One Investing through its affiliate Capital One Banking, but only after

a significant delay. For example, the request for the suitability documentation was sent on January 22, 2020 and the response was received on November 9, 2020. There was a total of 133 annuity contracts sold by the two agencies during the examination period, 71 from Capital One Investing and 62 from Stanley Monroe.

The Company violated Section 243.2(b) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain the policy record that is necessary for reconstructing the solicitation, rating and underwriting of annuity contracts.

The Company violated its own service agreements with Capital One Investing and Stanley Monroe by failing to obtain, within 30 days after the effective date of termination, all records in their possession which have been specifically maintained in connection with the Company's operations related to the annuity contracts.

The examiner recommends that the Company adhere to the provisions of its service agreements and obtain all its records from the producers in a timely manner.

Since the Company did not maintain the suitability documentation completed by Capital One Investing for the three annuity contracts, the examiner was unable to determine whether the Company complied with 11 NYCRR 224 (Insurance Regulation 187) for the three contracts issued by Capital One Investing.

B. Underwriting and Illustrations

The examiner reviewed a sample of new issued underwriting files.

1. Section 53-3.3(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) states,

> " . . . if the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policyowner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed."

A review of a sample of 30 universal life policies issued from January 1, 2014, to December 31, 2018, revealed that in all cases (100%), the Company did not label its mid-point values and its current values in its numeric summary as non-guaranteed.

The Company violated Section 53-3.3(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by not clearly labeling mid-point and current values in its numeric summary as non-guaranteed.

Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) states,

> "If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Subpart, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this Subpart, shall be labeled 'Revised Illustration' and shall be signed and dated by the applicant or policy-owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy-owner."

A review of a sample of 30 universal life policies issued from January 1, 2014, to December 31, 2018, revealed that in 3 cases (10.0%), either the initial illustrations were not provided to the applicant at the time of application or the revised application was not provided to the applicant at the time of the policy delivery.

The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by not providing a copy of the illustration to the applicant on or before the date of application and by not providing a revised illustration to the applicant at the time of policy delivery.

Section 3209(b)(2) of the New York Insurance Law states, in part:

> "No annuity contract or life insurance policy or certificate with an equity index account shall be delivered or issued for delivery in this state unless, no later than at the time of application, the prospective purchaser has been provided with a disclosure statement containing the following:
> (A) a statement in bold type to the effect that the equity index account provides benefits linked to an external equity index and does not participate directly in the equity market."

A review of a sample of 75 indexed annuity replacements from January 1, 2017, to December 31, 2019, revealed that in all cases (100%), the Disclosure Statements stated the initial cap rates were provided in the contract schedule; however, the information required under Section 3209(b)(2) of the New York Insurance Law was provided in several different documents. Furthermore, the statement that "the equity index account provides benefits linked to an external equity index and does not participate directly in the equity market," was not printed in bold type as required by Section 3209(b)(2)(A) of the New York Insurance Law.

The Company violated Section 3209(b)(2)(A) of the New York Insurance Law by failing to print the required statement in bold type.

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 3230(b) of the New York Insurance Law states, in part:

"The application to accelerated benefits shall:
(1) be dated by the insurer upon transmittal and shall be completed and signed by the policy owner not more than thirty days thereafter; . . . "

Section 3230(c) of the New York Insurance Law states:

"Insurers are prohibited from paying accelerated death benefit or special surrender values to the policy owner or certificate holder for a period of five days from the date on which the information specified in subdivision (d) of this section is transmitted in writing to the policy owner or certificate holder. The policy owner or certificate holder shall have the right to rescind the request for such payments at any time during the process of application for said benefits."

Section 3230(d) of the New York Insurance Law states:

"Within five days of receipt of an application to accelerate benefits, an insurer must provide the policyowner with the following:
(1) an illustration demonstrating the effect of the accelerated benefit on the policy's cash value and policy loans;
(2) a numerical computation of the amount of the death benefit which would be payable upon death;
(3) a numerical computation of the amount of the death benefit that would be payable upon acceleration; and
(4) a notice that other means may be available to achieve the intended goal, including a policy loan."

The examiner's review of three (3) accelerated death benefit claims revealed the following:

a) In two out of three claims (66.7%), the Company provided the illustration more than five days after the receipt of the application of accelerated benefits.

b) In all three claims (100%), the Company paid accelerated death benefits to the policyowner in less than five days after the illustration was transmitted to the policyowner.

c) In all three claims (100%), the Company did not fill in the Date of the Form filed in its instruction sheet of the accelerated death benefit claim package. The Company, however, dated its application in its cover letter of the accelerated death benefit claim package.

The Company violated Section 3230(c) of the New York Insurance Law by paying accelerated death benefits to a policyowner in less than a period of five days from the date on which the illustration was transmitted to the policyowner.

The Company violated Section 3230(d) of the New York Insurance Law by failing to provide an illustration to the policyowner within five days from receipt of an application for accelerated benefits.

The examiner recommends that the Company fill in the Date of the Form field in its instruction sheet of the accelerated death benefit claim package.

Insurance Circular Letter No. 4 (2012) advises that:

> "In sum, as of April 1, 2012, an insurer should only establish an RAA when a policyholder or beneficiary expressly chooses that mode of receiving life insurance proceeds, when the insurer explicitly informs the beneficiary in writing that it has a right to receive payment by a single check instead, and when the insurer provides the beneficiary with the clear and conspicuous disclosures described in this Circular Letter. . . . "

The examiner reviewed a sample of 20 retained asset account claim files and noted that the claim forms stated that "if you do not select a payment option, in most states you will receive a Total Control Account, unless MetLife is required by state law, rule or regulation to pay you by check." However, from an administrative perspective, the Company did send a check if the choice was left blank. Furthermore, the claim forms did not explicitly inform the beneficiary in writing that he or she has the right to receive payment by a single check unless it expressly chooses the retained asset account mode of receiving life insurance proceeds.

The examiner recommends that, going forward, the Company amend its claim forms to make it clear that the Retained Asset Account is not the default payment option in New York.

Insurance Circular Letter No. 11 (1978) advises that:

"As part of its complaint handling function, the company's consumer services department will maintain an ongoing central log to register and monitor all complaint activity. The log should be kept in a columnar form and list the following:

1. The date the complaint was received in-house.
2. The name of the complainant and the policy or claim file number.
3. The New York State Insurance Department file number.
4. The responsible internal division, i.e., personal lines underwriting, property damage claims, etc.
5. The person in the company with whom the complainant has been dealing.
6. The person within the company to whom the matter has been referred for review.
7. The date of such referral.
8. Bearing in mind the appropriate regulation mandating timely substantive replies, the dates of correspondence to the Insurance Department's Consumer Services Bureau.
   A) The acknowledgment (if any).
   B) The date of any substantive response.
   C) The chronology of further contacts with this Department.
9. The subject matter of the complaint.
10. The results of the complaint investigation and the action taken.
11. Remarks about internal remedial action taken as a result of the investigation."

Section 216.4 of 11 NYCRR 216 (Insurance Regulation 64) states:

"(a). Every insurer, upon notification of a claim, shall, within 15 business days, acknowledge the receipt of such notice. Such acknowledgment may be in writing. If an acknowledgment is made by other means, an appropriate notation shall be made in the claim file of the insurer. Notification given to an agent of an insurer shall be notification to the insurer. If notification is given to an agent of an insurer, such agent may acknowledge receipt of such notice. Unless otherwise provided by law or contract, notice to an agent of an insurer shall not be notice to the insurer if such agent notifies the claimant that the agent is not authorized to receive notices of claims.

(b) An appropriate reply shall be made within 15 business days on all other pertinent communications."

A review of the Company's initial consumer complaint log (provided on June 5, 2020) revealed that it did not include 57 complaints that were listed in the Department's consumer

complaint log. Furthermore, the complaint logs from January 2014 through December 2017, and January 2018 through December 2019 did not include the various columns listed below:

- The responsible internal division, i.e., personal lines underwriting, property damage claims, etc.;
- The person in the company with whom the complainant has been dealing;
- The person within the company to whom the matter has been referred for review;
- The date of such referral;
- The subject matter of the complaint;
- The results of the complaint investigation and the action taken;
- Remarks about internal remedial action taken as a result of the investigation;
- Department file number; and
- Dates of correspondence to the Insurance Department's Consumer Services Bureau.

A review of a sample of 25 complaint files revealed that in 3 cases (12.0%), the appropriate reply was not made within 15 business days of the receipt of the complaint. In addition, the examiner determined that the Company failed to maintain its complaint log in the format outlined in Insurance Circular Letter No. 11 (1978) during the examination period.

The Company violated Section 216.4(b) of 11 NYCRR 216 (Insurance Regulation 64) by failing to make an appropriate reply within 15 business days of the receipt of complaints.

Section 3211(a)(1) of the New York Insurance Law states, in part:

> " . . . for scheduled premium policies, a notice shall have been duly mailed at least fifteen and not more than forty-five days prior to the day when such payment becomes due . . . "

Section 3211(b)(2) of the New York Insurance Law states:

> "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."

A review of a sample of 40 lapsed policies revealed that in all cases (100%), the premium due notices did not 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 statement in the premium due notice for the VTRD system stated that "If the premium due is not paid while the policy is in force (or if a previously due premium is in default), the policy and all payments made to First MetLife Investors for the policy will be forfeited and rendered void." The statement in the premium due notice for the PAS system stated that "If the premium due is not paid while the policy is in force (or if a previous due premium is in default), the policy and all payments made to BRIGHTHOUSE FINANCIAL for the policy will be forfeited and rendered void, except for the right to reinstate the policy that may be provided by the policy."

A review of the premium notices for a sample of 40 term life policies revealed that in 12 cases (30.0%), the Company did not mail the premium due notice within the required timeframe.

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices 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 Company violated Section 3211(a)(1) of the New York Insurance Law by failing to mail the notices at least fifteen and not more than forty-five days prior to the day when such payment becomes due.

The examiner recommends that the Company print on the front of the payment notice, not on the back page of the notice, the required disclosure 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 nonforfeiture benefit.

The examiner also recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies in which the insured's death occurred within one year of the date each policy lapsed.

Section 3240(f) of the New York Insurance Law states, in part:

> "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 . . . ”

Section 3240(d) of the New York Insurance Law states, in part:

“Standards for cross-checking policies.
(1) An insurer shall use the death index to cross-check every policy and account subject to this section no less frequently than quarterly . . .
(2) The cross-checks shall be performed using: (A) the insured or account holder's social security number; or (B) where the insurer does not know the insured or account holder's social security number, the name and date of birth of the insured or account holder.
(3) If an insurer only has a partial name, social security number, date of birth, or a combination thereof, of the insured or accountholder under a policy or account, then the insurer shall use the available information to perform the cross-check.
(4) An insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index.”

Section 226.4(e) of 11 NYCRR 226 (Insurance Regulation 200) states:

“Every insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, including:
(1) nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
(2) compound last names, and blank spaces or apostrophes in last name;
(3) incomplete date of birth data, and transposition of the ‘month’ and ‘date’ portions of the date of birth;
(4) incomplete social security number; and
(5) common data entry errors in name, date of birth and social security data.”

Section 226.6 of 11 NYCRR 226 (Insurance Regulation 200) states:

“An insurer subject to this Part shall include in the report required under Abandoned Property Law section 703 any information on unclaimed benefits due pursuant to this Part and the number of policies and accounts that the insurer has identified pursuant to section 226.4 of this Part for the prior calendar year under which any outstanding monies have not been paid or distributed by December 31st of such year, except potential matches still being investigated pursuant to section 226.4 of this Part. A copy of the report also shall be filed with the superintendent.”

The examiner conducted a search to determine whether insureds were deceased when the policies were still in force. The examiner’s search revealed that in 2 out of the 12 policies reviewed (16.7%), the insured was deceased. The Company also confirmed that the insureds were deceased, and the death benefits were due to the beneficiaries. For the policies at issue, the Company stated

that it followed its electronic death match ("EDM") procedures, and no matches were generated; however, the Company's EDM procedures required either an exact social security number match or an exact date of birth match, together with fuzzy or exact name matches, to generate a match of sufficient quality to justify manual research. Since this process requires an exact match first before accounting for common variations, it is contrary to the requirements of Section 3240(d) of the New York Insurance Law, which states that reasonable procedures should be established to account for common variations in data that would preclude an exact match.

The Company violated Section 3240(f)(1) of the New York Insurance Law by failing to establish procedures to reasonably confirm the death of an insured or accountholder.

The Company violated the Section 3240(d)(4) of the New York Insurance Law and Section 226.4(e) of 11 NYCRR 226 (Insurance Regulation 200) by failing to establish reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, leading to the failure to effectively run thousands of policies against the Social Security Death Match Index ("SSDMI").

The examiner recommends that the Company investigate its in-force for all lines of business, for the period under examination, to determine whether there are other instances in which the insured is deceased. The examiner further recommends that, for these cases, the Company start the death claim process for these deceased insureds and remove them from the in-force inventory once payments of the death benefits are made.

The examiner's review of the Abandoned Property reports during the examination period indicated that the Company failed to file copies of the reports with the superintendent.

The Company violated Section 226.6 of 11 NYCRR 226 (Insurance Regulation 200) by failing to file copies of the Abandoned Property reports with the superintendent.

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

> "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 . . . annuitant in connection with a death claim on such a policy of . . . contract of annuity . . . to the date of payment and shall be added to and be a part of the total sum paid."

A review of a sample of 29 indexed annuity contracts for which 47 beneficiaries were paid death proceeds including the contract value on the date of death of the insured and interest revealed that for 19 beneficiaries (40.43%), the Company failed to pay the appropriate amount of interest on the proceeds based on the Company's interest settlement rate of three percent.

The Company violated Section 3214(c) of the New York Insurance Law by failing to pay the amount of interest that was computed daily at the Company's rate of interest from the date of death to the date of payment.

The examiner recommends that the Company amend its claims procedures to ensure that the interest settlement rate that is used on death benefits paid for all its annuity products is consistent with Section 3214 of the New York Insurance Law.

D. Internal Audit

The examiner's review of the list of internal audits that were performed during the examination period revealed that market conduct functions such as replacements, suitability, claims, utilization review, policyholder services, privacy, third party service providers, among other activities were not reviewed by the Company's internal audit function.

The examiner recommends that the Company schedule and perform regular annual internal audits of its market conduct functions.

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the violation contained in the prior report on examination and the subsequent action taken by the Company in response to the citation:

Item	Description
A	The Company violated Section 219.4(p) of Department Regulation No. 34-A by making reference to the historical background of Metropolitan Life Insurance Company and its affiliates (MetLife), and to the strength and/or longevity of MetLife and its growth in the global market, which gives the impression that someone other than First MetLife Investors Insurance Company might have a financial responsibility under a policy issued by the Company. A review of a sample of advertisements did not reveal instances in which an advertisement made a reference to the historical background of the Company and its affiliates.

6. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comment contained in this report:

Item	Description	Page No(s).
A	The Company violated Section 219.4(a)(1) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to produce advertisements of its shield annuity product that are sufficiently complete and clear so that it is neither misleading nor deceptive, nor has the capacity or tendency to mislead or deceive.	12
B	The Company violated Section 219.4(c) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the word "guarantee" in a context that is deemed to be misleading and capable of being deceptive.	12
C	The Company violated Section 219.4(d) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the word "minimum" in a context that is deemed to be misleading and capable of being deceptive.	12
D	The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to make available full and clear information on which an applicant for life insurance or annuities can make a decision in the applicant's best interest.	16
E	The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to examine the sales material, including any proposal, used in the sale of the life insurance policies or annuity contracts, and the "Disclosure Statement", and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations.	16
F	The Company violated Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by engaging in practices that prevented the orderly working of the Regulation in accomplishing its intended purpose in the protection of policyholders and contract holders.	16
G	The Company violated Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, 3rd 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.	17

Item	Description	Page No(s).
H	The Company violated Section 51.6(a)(2) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to provide a completed "Definition of Replacement" signed by the applicant and insurance agent or broker during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur.	18
I	The Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to provide a completed "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur.	19
J	The Company violated Section 51.6(b)(5) of 11 NYCRR 51 (Insurance Regulation 60, 3rd Amendment) by failing to complete a "Disclosure Statement" signed by the agent during the processing of subsequent deposits to existing annuity contracts, when a replacement transaction has or is likely to occur.	19
K	The Company violated Section 224.4 of 11 NYCRR 224 (Insurance Regulation 187 prior to August 1, 2019) by failing to have reasonable grounds for believing that the replacement 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 during the processing of subsequent deposits to existing annuity contracts.	19
L	The Company violated Section 224.1(b) of 11 NYCRR 224 (Insurance Regulation 187 after August 1, 2019) by failing to reasonably inform of the potential consequences of the in-force transaction, both favorable and unfavorable to the consumer during the processing of subsequent deposits to existing annuity contracts.	19
M	The Company violated Section 224.4(f) of 11 NYCRR 224 (Insurance Regulation 187) by failing to implement an adequate system of supervision to determine whether the producer properly considered the unique features of the indexed annuity product in the producer's suitability analysis.	20
N	The examiner recommends that the Company develop a suitability form specific to the indexed shield annuity product for use going forward.	20

Item	Description	Page No(s).
O	The Company violated Section 243.2(b) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain the policy record that is necessary for reconstructing the solicitation, rating and underwriting of annuity contracts.	21
P	The Company violated its own service agreements with Capital One Investing and Stanley Monroe by failing to obtain, within 30 days after the effective date of termination, all records in their possession which have been specifically maintained in connection with the Company's operations related to the annuity contracts.	21
Q	The examiner recommends that the Company adhere to the provisions of its service agreements and obtain all its records from the producers in a timely manner.	21
R	The Company violated Section 53-3.3(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by not clearly labeling mid-point and current values in its numeric summary as non-guaranteed.	21
S	The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by not providing a copy of the illustration to the applicant on or before the date of application and by not providing a revised illustration to the applicant at the time of policy delivery.	22
T	The Company violated Section 3209(b)(2)(A) of the New York Insurance Law by failing to print the required statement in bold type.	23
U	The Company violated Section 3230(c) of the New York Insurance Law by paying accelerated death benefits to a policyowner in less than a period of five days from the date on which the illustration was transmitted to the policyowner.	24
V	The Company violated Section 3230(d) of the New York Insurance Law by failing to provide an illustration to the policyowner within five days from receipt of an application for accelerated benefits.	24
W	The examiner recommends that the Company fill in the Date of the Form field in its instruction sheet of the accelerated death benefit claim package.	24
X	The examiner recommends that, going forward, the Company amend its claim forms to make it clear that the Retained Asset Account is not the default payment option in New York.	25

Item	Description	Page No(s).
Y	The Company failed to maintain its complaint log in the format outlined in Insurance Circular Letter No. 11 (1978) during the examination period.	26
Z	The Company violated Section 216.4(b) of 11 NYCRR 216 (Insurance Regulation 64) by failing to make an appropriate reply within 15 business days of the receipt of complaints.	26
AA	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices 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.	27
BB	The Company violated Section 3211(a)(1) of the New York Insurance Law by failing to mail the notices at least fifteen and not more than forty-five days prior to the day when such payment becomes due.	27
CC	The examiner recommends that the Company print on the front of the payment notice, not on the back page of the notice, the required disclosure 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 nonforfeiture benefit.	27
DD	The examiner also recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies in which the insured's death occurred within one year of the date each policy lapsed.	27
EE	The Company violated Section 3240(f)(1) of the New York Insurance Law by failing to establish procedures to reasonably confirm the death of an insured or accountholder.	29
FF	The Company violated the Section 3240(d)(4) of the New York Insurance Law and Section 226.4(e) of 11 NYCRR 226 (Insurance Regulation 200) by failing to establish reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, leading to the failure to effectively run thousands of policies against the SSDMI.	29

Item	Description	Page No(s).
GG	The examiner recommends that the Company investigate its in-force for all lines of business, for the period under examination, to determine whether there are other instances in which the insured is deceased. The examiner further recommends that, for these cases, the Company start the death claim process for these deceased insureds and remove them from the in-force inventory once payments of the death benefits are made.	29
HH	The Company violated Section 226.6 of 11 NYCRR 226 (Insurance Regulation 200) by failing to file copies of the Abandoned Property reports with the superintendent.	29
II	The Company violated Section 3214(c) of the New York Insurance Law by failing to pay the amount of interest that was computed daily at the Company's rate of interest from the date of death to the date of payment.	30
JJ	The examiner recommends that the Company amend its claims procedures to ensure that the interest settlement rate that is used on death benefits paid for all its annuity products is consistent with Section 3214 of the New York Insurance Law.	30
KK	The examiner recommends that the Company schedule and perform regular annual internal audits of its market conduct functions.	30

Respectfully submitted,

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

Subscribed and sworn to before me
this 7th day of April, 2023

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
Assistant Chief

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. 32070

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

*I, **LINDA A. LACEWELL**, 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

BRIGHTHOUSE 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 16th day of April 2020

LINDA A. LACEWELL
Superintendent of Financial Services

By: Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU