MARKET CONDUCT REPORT ON EXAMINATION

OF THE

EMPIRE FIDELITY INVESTMENTS LIFE INSURANCE

COMPANY

AS OF DECEMBER 31, 2022

EXAMINER: **CHONG KIM**

DATE OF REPORT: **OCTOBER 11, 2024**

TABLE OF CONTENTS

ITEM		PAGE NO.
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Company	4
	A. History	4
	B. Territory and plan of operation	4
4.	Market conduct activities	5
	A. Advertising and sales activities	5
	B. Underwriting and policy forms	6
	C. Treatment of policyholders	8
5.	Prior report summary and conclusions	12
6.	Summary and conclusions	13

December 24, 2024

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. 32657, dated April 26, 2024, and annexed hereto, an examination has been made into the condition and affairs of Empire Fidelity Investments Life Insurance Company, hereinafter referred to as "the Company." The Company's home office is located at 640 Fifth Avenue, 5th Floor, New York, NY 10019.

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 Insurance Regulation 60 and Section 51.6(b)(4) of Insurance Regulation 60 by failing to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law. As a result, the Company failed to make available full and clear information in the Disclosure Statement on which the applicant could decide in their best interest. (See item 4A of this report.)
- The Company violated Section 3240(f)(1) of the New York Insurance Law by failing 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. (See item 4C-3 of this report.)
- The Company violated Section 226.4(c) of Insurance Regulation 200 by failing to use the annuitants' social security number when it uses the additional resources to cross-check the contracts to terminate benefits or close an account. (See item 4C-3 of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2018, to December 31, 2022. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2022, 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 recommendation 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 New York on May 1, 1991, was licensed and commenced business on June 1, 1992. Initial resources of $7,000,000, consisting of common capital stock of $2,000,000 and paid in and contributed surplus of $5,000,000, were provided through the sale of 200,000 shares of common stock (with a par value of $10 each) for $35 per share. As of December 31, 2022, the Company's capital and paid in and contributed surplus were $2,000,000 and $13,500,000 respectively.

B. Territory and Plan of Operation

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

The Company is licensed to transact business in New York only. In 2022, 100% of life premiums and annuity considerations were received from New York. Policies are written on a non-participating basis.

The principal line of business sold during the period under examination was individual annuities. The Company markets and sells a deferred variable annuity product, Personal Retirement Annuity; one immediate variable annuity product, Freedom Lifetime Income Annuity ("FLI"); and one traditional term life insurance product. The FLI was closed to new investors during 2017.

The Company distributes its products through an affiliate, Fidelity Insurance Agency, and discount brokerage firm, Fidelity Brokerage Services LLC, due to the securities component of the variable products. The products are marketed through these affiliates via the following channels: internet, direct mail, media advertising, phone and various local investor centers located throughout the state of New York.

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.

> Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60) states, in part:
>
> "Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance or annuity contract shall: . . .
>
> (3) prior to the delivery of the life insurance policy or annuity contract, require an accurate and complete 'Disclosure Statement' signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to this Part, including the primary reason or reasons for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract cannot meet the applicant's objectives;
> (4) examines 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 promulgated thereunder; . . .
> (8) maintain copies of: the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract; proof of receipt of 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 that issued the life insurance policy or annuity contract that is to be replaced, indexed by insurance agent and broker, in accordance with Part 243 of this Title (Regulation 152): . . . "

The examiner reviewed all five (5) external term life replacements and a sample of 40 external variable annuity replacements for the examination period. Following are the errors and omission noted during the review:

1) In three out of five life replacements reviewed (60%), the Company did not accurately include the information of the proposed and existing policy in Section 1, Description

of Transaction, and Section 2, Summary Result Comparison of the Disclosure Statement.

2) In three out of five life replacements reviewed (60%), the Company did not maintain copies of one or more of the following documents for recordkeeping as prescribed in Section 51.6(b)(8) of Insurance Regulation 60:
   - "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts".
   - Signed and completed "Disclosure Statement".
3) Notification of replacement to the insurer that issued the life insurance policy or annuity contract that is to be replaced. In 6 out of 40 annuity replacements reviewed (15%), the Company did not accurately include the information of the existing contract in Section 2, Summary Result Comparison of the Disclosure Statement.

The Company violated Section 51.6(b)(3) of Insurance Regulation 60 and Section 51.6(b)(4) of Insurance Regulation 60 by failing to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law. As a result, the Company failed to make available full and clear information in the Disclosure Statement on which the applicant could decide in their best interest. The Company is directed to come into compliance with Section 51.6(b)(3) of Insurance Regulation 60 and Section 51.6(b)(4) of Insurance Regulation 60.

The Company violated Section 51.6(b)(8) of Insurance Regulation 60 by failing to maintain copies 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 that issued the life policy that is to be replaced. The Company is directed to come into compliance with Section 51.6(b)(8) of Insurance Regulation 60.

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 of the New York Insurance Law states, in part:

> "(a) In this article, 'policy form' means any policy, contract, certificate, or evidence of insurance and any application therefor, or rider or endorsement thereto, . . .
> (b)(1) No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law. . . . "

A review of the application forms used for the sampled individual variable annuity contracts revealed the following:

a) The examiner identified six instances where the Company used application form number EDVA-APP-0915 to issue an individual variable annuity contract during the examination period. In three instances, an applicant electronically signed the application form; however, the Company did not obtain the Department's approval to permit the use of electronic signature for this form.

b) The Company used application form number EDVA-APP-0318 to issue an individual variable annuity contract during the examination period. The Company received the Department's approval to permit the use of electronic signatures on November 4, 2020. In three instances, an applicant electronically signed the application prior to the approval date.

The Company violated Section 3201(b)(1) of the New York Insurance Law by failing to obtain the Department's approval to permit the use of the applicant's electronic signature on application policy forms EDVA-APP-0915 and EDVA-APP-0318.

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

> "(b)(1) No policy of life insurance shall be delivered in this state after the applicable effective date . . . unless the prospective purchaser has been provided with the following: . . .
> (B) a policy summary upon delivery of the policy . . .
> (e) A policy summary shall include the following: . . .
> (2) the name . . . of the insurance agent or broker . . ."

The examiner reviewed a sample of 10 term life policies issued during the examination period. The review revealed that in 2 out of 10 term life policies issued (20%), the Company did not include the names of the insurance agents or brokers in the policy summaries that were provided to the policyholders.

The Company violated Section 3209(e)(2) of the New York Insurance Law by failing to include the names of its agents or brokers on the policy summaries that were provided to the policyholders. The Company is directed to come into compliance with Section 3209(e)(2) of the New York Insurance Law.

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 216.6(c) of 11 NYCRR 216 (Insurance Regulation 64) states, in part:

> "(1) Within 15 business days after receipt by the insurer of a properly executed proof of loss and receipt of all items, statements and forms that the insurer requested from the claimant, the claimant, or the claimant's authorized representative, shall be advised in writing of the acceptance or rejection of the claim by the insurer. . . . (2) If the insurer needs more time to determine whether the claim should be accepted or rejected, it shall so notify the claimant, or the claimant's authorized representative, within 15 business days after receipt of such proof of loss or requested information. Such notification shall include the reasons additional time is needed for investigation. . . . If the claim is accepted, in whole or in part, the claimant, or the claimant's authorized representative, shall be advised in writing of the amount offered. . . ."

The examiner reviewed a sample of 23 individual variable annuity death claims paid from the Company's ARK administrative system. In 5 out of 23 annuity claims paid (21.7%), the claimants selected the benefit payment to be made via lumpsum transferred to a nonretirement account upon the Company's acceptance of the claim. In these instances, the Company did not advise in writing of the amounts offered to the claimant or claimant's authorized representative.

The Company violated Section 216.6(c)(2) of Insurance Regulation 64 when the Company failed to advise in writing of the amount offered to the claimant upon acceptance of the claim. The Company is directed to come into compliance with Section 216.6(c)(2) of Insurance Regulation 64.

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

> "(a) Except with respect to automobile insurance, all claim forms for insurance, and all applications for commercial insurance and accident and health insurance,

> provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for deliver in this State, shall contain the following statement:
> 'Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.' . . .
> (d) Location of warning statements and type size. The warning statement required by subdivisions (a), (b), and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form and shall be printed in type which will produce a warning statement of conspicuous size. . . . "

The Company had a total of five claims for its life products during the examination period. A review of the claim forms used by the Company in settlement of the claims reveals that in four out of five claims (80%), the Company used claim forms that failed to place the New York fraud warning statement immediately above the space provided for the signature of the person executing the claim form.

The Company violated Section 86.4(d) of Insurance Regulation 95 by failing to use a claim form where the required fraud warning statement was placed immediately above the space provided for the signature of the person executing the claim. The Company is directed to come into compliance with Section 86.4(d) of Insurance Regulation 95.

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

> "(b) Applicability. . . .
> (2) Notwithstanding paragraph one of this subsection:
> (A) with respect to a policy delivered or issued for delivery outside this state, a domestic insurer may, in lieu of the requirements of this section, implement procedures that meet the minimum requirements of the state in which the insurer delivered or issued the policy, provided that the superintendent determines that such other requirements are no less favorable to the policy owner and beneficiary than those required by this section; . . .
> (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 . . ."

Section 226.4 of 11 NYCRR 226 (Insurance Regulation 200) states, in part:

> " . . . (b)(1) An insurer shall use the latest available updated version of the death index to cross-check every policy and account subject to this Part, except as specified in subdivision (h) of this section. The cross-checks shall be performed no less frequently than quarterly . . .
> (2) The cross-checks shall be performed using:
> (i) the insure or account holder's social security number; or
> (ii) 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. . . .
> (c) If an insurer uses a resource instead of or in addition to a death index in order to terminate benefits or close an account, the insurer shall also use that resource when cross-checking policies or accounts pursuant to subdivision (b) of this section. . . . "

The examiner reviewed a sample of 16 annuitants, who were identified as a potential death match, from the Company's death master index (the "Index"). The review revealed the following errors and omissions:

a) In 3 out of 16 instances (18.8%), the Company identified each of the annuitants as a potential death match in the Index; however, the Company did not provide any evidence of a notification to confirm the death of the annuitants nor did the Company provide evidence that it attempted and began to locate the beneficiary or beneficiaries within 90 days after the match.

The Company violated Section 3240(f)(1) of the New York Insurance Law by failing 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. The Company is directed to come into compliance with Section 3240(f)(1) of the New York Insurance Law.

b) The Company advises that it uses additional sources, such as LexisNexis, to investigate and confirm an annuitant's living status by using the social security number when the Company identified an annuitant as a potential death match. In 3 out of 16 instances (18.8%), the Company identified each of the deceased annuitants as a potential death match in the Index. The Company advised that it investigated the living status of these annuitants through additional sources after the match, but it did not reveal them as deceased during the investigation. Thus,

the Company did not open the claim until notified by the beneficiaries. The examiner requested evidence of the Company using the social security numbers, which are listed in the Index, of the deceased annuitants during an investigation through additional sources; however, the Company did not provide any evidence of using the social security numbers of the deceased annuitants to investigate through additional sources.

The Company violated Section 226.4(c) of Insurance Regulation 200 by failing to use the annuitants' social security number when it uses the additional resources to cross-check the contracts to terminate benefits or close an account. The Company is directed to come into compliance with Section 226.4(c) of Insurance Regulation 200.

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the market conduct recommendation contained in the prior report on examination as of December 31, 2012, and the subsequent action taken by the Company in response to the recommendation:

Item	Description
B	The examiner strongly recommends that "Insurance Request Form," Form No. SHTFORM-NY (1-02) be filed with the Department for approval. The examiner confirmed that the Company discontinued use of Form No. SHTFORM-NY (1-02) in the year 2010.

6. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

Item	Description	Page No(s).
A	The Company violated Section 51.6(b)(3) of Insurance Regulation 60 and Section 51.6(b)(4) of Insurance Regulation 60 by failing to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Insurance Law. As a result, the Company failed to make available full and clear information in the Disclosure Statement on which the applicant could decide in their best interest.	6
B	The Company violated Section 51.6(b)(8) of Insurance Regulation 60 by failing to maintain copies 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 that issued the life policy that is to be replaced.	6
C	The Company violated Section 3201(b)(1) of the New York Insurance Law by failing to obtain the Department's approval to permit the use of the applicant's electronic signature on application policy forms EDVA-APP-0915 and EDVA-APP-0318.	7
D	The Company violated Section 3209(e)(2) of the New York Insurance Law by failing to include the names of its agents or brokers on the policy summaries that were provided to the policyholders.	8
E	The Company violated Section 216.6(c)(2) of Insurance Regulation 64 when the Company failed to advise in writing of the amount offered to the claimant upon acceptance of the claim.	8
F	The Company violated Section 86.4(d) of Insurance Regulation 95 by failing to use a claim form where the required fraud warning statement was placed immediately above the space provided for the signature of the person executing the claim.	9
G	The Company violated Section 3240(f)(1) of the New York Insurance Law by failing 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.	10

Item	Description	Page No(s).
H	The Company violated Section 226.4(c) of Insurance Regulation 200 by failing to use the annuitants' social security number when it uses the additional resources to cross-check the contracts to terminate benefits or close an account.	11

Respectfully submitted,

Chong Kim
Associate Insurance Examiner

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

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

Chong Kim

Subscribed and sworn to before me
this 24th day of December, 2024
Audrey Hall

Audrey Hall
Notary Public, State of New York
Reg. No. 01HA0010698
Qualified in Kings County
Commission Expires 07/07/2027

APPOINTMENT NO. 32657

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

*I, **ADRIENNE A. HARRIS**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

CHONG KIM

as a proper person to examine the affairs of the

EMPIRE FIDELITY INVESTMENT LIFE INSURANCE COMPANY

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

COMPANY

with such other information as he shall deem requisite.

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

this 26th day of April, 2024

ADRIENNE A. HARRIS
Superintendent of Financial Services

By: Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU