



STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF THE
FIRST SYMETRA NATIONAL LIFE INSURANCE COMPANY
OF NEW YORK

CONDITION:

DECEMBER 31, 2004

DATE OF REPORT:

AUGUST 12, 2005

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EXAMINER:

ROBERTO PARADIS

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Superintendent

August 12, 2005

Honorable Howard Mills
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22339, dated March 7, 2005 and annexed hereto, an examination has been made into the condition and affairs of First Symetra National Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 1 Liberty Plaza, 18th Floor, New York, New York 10006.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

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

1. EXECUTIVE SUMMARY

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2004 filed annual statement. (See item 5 of this report)

The Company violated Section 1411(a) of the New York Insurance Law by engaging in security lending activities without the authorization or approval of its board of directors or a committee thereof, responsible for making such loans. (See item 3C of this report)

The Company violated Section 4232(a)(2) of the New York Insurance Law for crediting additional amounts on annuity contracts without written criteria approved by the board of directors of the Company. (See item 3C of this report)

The examiner recommends that the Company institute procedures to obtain at least annually, conflict of interest statements from its board of directors and "key employees". (See item 3C of this report)

The Company violated multiple sections of Department Regulation No. 60 by not having as part of each application: a completed "Definition of Replacement", a properly completed Disclosure Statement, and proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts", and also, for failing to adequately inform and train its agents and brokers with respect to the requirements of Department Regulation No. 60. (See item 6A of this report)

The Company violated Section 1505(d)(3) of the New York Insurance Law for failing to notify the Superintendent of its intention to receive investment advisory and accounting and recordkeeping services from its affiliate, White Mountains Advisors, LLC. (See item 3B of this report)

The Company violated Section 216.11 of Department Regulation No. 64 for failing to maintain claim files so that events relating to a claim can be reconstructed by the Department examiner. (See item 6C of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2001. This examination covers the period from January 1, 2002 through December 31, 2004. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2004 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2004 to determine whether the Company's 2004 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Company history
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Officers' and employees' welfare and pension plans
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to the violations contained in the prior report on examination. The results of the examiner's review are contained in item 7 of this report.

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

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of the State of New York on April 23, 1987, was licensed and commenced business on January 2, 1990. The Company was originally incorporated as First Safeco National Life Insurance Company of New York (“First Safeco”). The present name was adopted in August 2004 after it was acquired by an investor group led by White Mountains Insurance Group, Ltd. (“WMIG”) and Berkshire Hathaway Incorporated (“BHI”). Initial resources of \$8,500,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$6,500,000, were provided through the sale of 20,000 shares of common stock for \$425 per share.

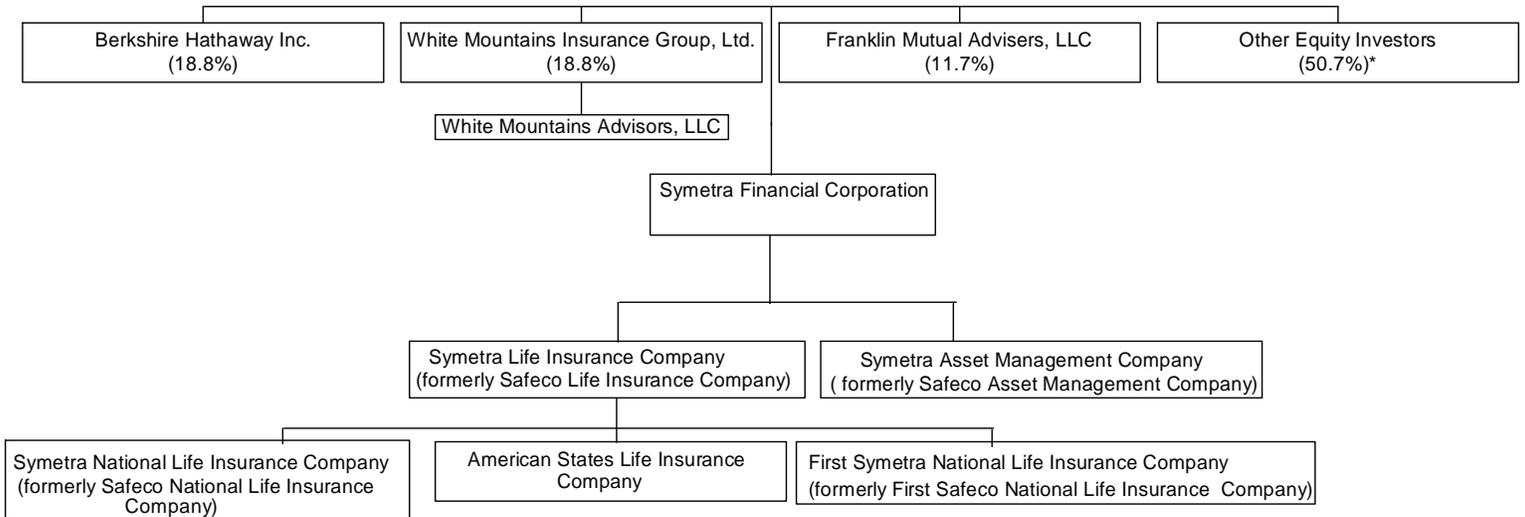
During the examination period, the Company’s parent, Symetra Life Insurance Company (“Symetra”), contributed \$7.5 million in gross paid in and contributed surplus to the Company to alleviate new business surplus strain and help maintain the Company’s risk based capital (“RBC”) at a 300% level. At December 31, 2004, the Company’s capital and paid in and contributed surplus were \$2,000,000 and \$14,000,000, respectively.

In its 2003 annual letter to shareholders, Safeco Corporation (“Safeco”), the Company’s former ultimate parent, announced a new strategic plan to sell its life and investment operations to concentrate on the property and casualty business. Consequently, on August 2, 2004, it sold Safeco Life Insurance Company and its three subsidiaries (Safeco National Life Insurance Company, First Safeco, and American States Life Insurance Company) to an investor group led by WMIG, and BHI for the purchase price of \$1.34 billion. After the acquisition, First Safeco was renamed First Symetra National Life Insurance Company of New York.

B. Holding Company

The Company is a wholly owned subsidiary of Symetra, a Washington domiciled life insurer. Symetra is in turn a wholly owned subsidiary of Symetra Financial Corporation, a Delaware corporation.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2004 follows:



* No one Equity Investor purchased 10% or more of the voting securities of Symetra Financial Corporation.

The Company had three service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination	
Administrative Services 25868	3/17/99 amended 7/09/02	Symetra	The Company	All services other than investment advisory services	2002 2003 2004	(\$1,308,555) (\$1,063,377) (\$ 874,789)
Investment Services 16802	6/13/90	Safeco Asset Management Company (“SAMC”)	The Company	Advice and services regarding the purchase, sale or other disposition of securities.	2002 2003 2004	(\$ 46,348) (\$119,494) (\$ 82,351)
Investment Advisory Agreement	8/02/04	White Mountains Advisors, LLC (“WMA”)	The Company	Advice and services regarding the purchase, sale or other disposition of securities.	2004	(\$ 68,020)

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

The Company participates in a federal income tax allocation agreement with its parent and two affiliates.

Section 1505(d) of the New York Insurance Law states, in part:

“The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period . . .

(1) sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than one-half of one percent but less than five percent of the insurer's admitted assets at last year-end . . .

(3) rendering of services on a regular systematic basis . . .”

In June and December of 2003, Symetra made two investments in the Company through two cash contributions in the amount of \$2.0 million and \$2.5 million, respectively. The Company did not notify the Superintendent of these transactions which involved approximately 2.41% and 3.10%, respectively, of the Company's 2002 admitted assets.

The examiner recommends that in the future the Company provide notice to the Superintendent at least thirty days prior to accepting investments of surplus contributions from its parent or from any other affiliate in accordance with Section 1505(d) of the New York Insurance Law.

In August 2004, the Company entered into an investment advisory service agreement with WMA, an affiliate. WMA replaced SAMC as the Company's new asset manager. WMA also has an investment accounting service agreement with State Street Bank ("the bank"). Under the agreement, the bank provides accounting and recordkeeping services to the Company and its affiliates. The Company did not notify the Superintendent of its intention to receive such services on a regular basis from its affiliate.

The Company violated Section 1505(d)(3) of the New York Insurance Law for failing to provide notice to the Superintendent of its intention to receive investment advisory and accounting and recordkeeping services from WMA.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 13 and not more than 21 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in August of each year. As of December 31, 2004, the board of directors consisted of 10 members. Regular meetings of the board are held at such time as may from time to time be fixed by the board.

The 10 board members and their principal business affiliation, as of December 31, 2004, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Allyn D. Close Bellevue, Washington	Senior Vice President First Symetra National Life Insurance Company of New York and Symetra Life Insurance Company	2004
Jennifer V. Davies Kirkland, Washington	Senior Vice President First Symetra National Life Insurance Company of New York and Symetra Life Insurance Company	2004
Lois W. Grady* Burlington, Connecticut	Retired	2004
Roger F. Harbin Redmond, Washington	Treasurer First Symetra National Life Insurance Company of New York Executive Vice President and Treasurer Symetra Life Insurance Company	2001
Sander M. Levy* New York, New York	Private Equity Investor Vestar Capital Partners	2004
Ronald P. McIntosh* Westport, Connecticut	Portfolio Manager Caxton Associates	2004
Margaret A. Meister Kirkland, Washington	Chief Actuary First Symetra National Life Insurance Company of New York Vice President and Chief Actuary Symetra Life Insurance Company	2004
George C. Pagos Seattle, Washington	Secretary First Symetra National Life Insurance Company of New York Vice President, General Counsel and Secretary Symetra Life Insurance Company	2004
David I. Schamis* New York, New York	Private Equity Investor J.C. Flowers & Co., LLC	2004
Randall H. Talbot Medina, Washington	Chairman and President First Symetra National Life Insurance Company of New York and Symetra Life Insurance Company	1998

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

Oscar Tengtio was elected to serve on the board effective January 17, 2005.

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

Section 1202(a) of the New York Insurance Law states, in part:

“(1) . . . the number of directors shall be fixed by the by-laws . . .
(2) If not otherwise fixed under this article, the number shall be thirteen but it may be increased or . . . decreased by amendment of the by-laws, or by action of the board . . .”

Section 1201(a)(5)(B)(v) of the New York Insurance Laws states, in part:

“. . . the number of directors shall not be less than thirteen, however, a life insurance corporation with admitted assets of less than one and one-half billion dollars, may have not less than nine directors of which at least four must not be officers or employees of the company or any entity controlling, controlled by, or under common control with the company and who are not beneficial owners of a controlling interest in the voting stock of the company or any such entity”

Section 2, Article II of the Company's by-laws, as amended May 3, 1990, states, in part:

“Number of Directors. The number of directors constituting the entire Board of Directors shall not be less than thirteen nor more than twenty-one. Within such limits, the number of directors may be fixed from time to time by vote of a majority of the Board of Directors at any regular or special meeting”

The Company's bylaws as amended May 3, 1990 require that the number of directors constituting the entire board of directors be not less than 13 members. As part of the sale of the Company, all board members resigned effective July 31, 2004 and on August 2, 2004, the Company's sole shareholder, Symetra, elected a new slate of only 10 directors. As of December 31, 2004, the Company still had only ten board members serving on the board.

The Company violated Section 1202(a)(2) of the New York Insurance Law and its by-laws by failing to maintain the minimum number of 13 directors on the board. A similar violation appeared in the prior report on examination.

The Company has subsequently amended its bylaws to reduce the minimum number of directors to nine as per Section 1201(a)(5)(B)(v) of the New York Insurance Law. The Department approved the amendment to the Company's bylaws effective January 18, 2005.

It is noted that three of the four independent directors serving on the board are affiliated with three institutional investors that acquired an interest in the Company from Safeco; two of which serve on the Company's independent (i.e., Audit) committee. The percentage of ownership of the three institutional investors is 15.49 in total (6.57, 6.57 and 2.35 individually).

The Company did not obtain conflict of interest statements from its board of directors in 2003 and 2004. Also, the Company could not provide proof that it obtained annual conflict of interest statements from its "key employees".

The examiner recommends that the Company institute procedures to obtain at least annually, conflict of interest statements from its board of directors and "key employees".

Section 1411 (a) of the New York Insurance Law states, in part:

"No domestic insurer shall make any loan or investment . . . unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan. The committee's minutes shall be recorded and a report submitted to the board of directors at its next meeting".

The Company entered into a securities lending agreement with JPMorgan Chase Bank ("JPMorgan") dated February 1, 2000, whereby JPMorgan would lend securities on behalf of the Company. There was no evidence that the board of directors authorized or approved the Company's security lending program with JPMorgan. Also, there was no evidence that the board of directors approved securities lending transactions during the examination period.

The Company violated Section 1411(a) of the New York Insurance Law by engaging in security lending activities without the authorization or approval of its board of directors or a committee thereof, responsible for making such loans.

Paragraph 25 of Statutory Statement of Accounting Principle No. 18 ("SSAP No. 18") states, in part:

". . . The specific collateral requirements are as follows:

a. The reporting entity shall receive collateral having a fair value as of the transaction date at least equal to 102 percent of the fair value of the loaned securities at that date. If at any time the fair value collateral is less than 100 percent of the fair value of the loaned securities, the counterparty shall be

obligated to deliver additional collateral, the fair value of which, together with the fair value of all collateral then held in connection with the transaction at least equals 102 percent of the fair value of the loaned securities.

b. In the event that foreign securities are loaned and the denomination of the currency of the collateral is other than the denomination of the currency of the loaned foreign securities, the amount of collateral shall be at least equal to 105 percent of the fair value of the loaned securities at that date. If at any time the fair value is less than 102 percent of the fair value of the loaned securities, the reporting entity must obtain additional collateral, the fair value of which together with the fair value of all collateral then held in connection with the transaction at least equals 105 percent of the fair value of the loaned securities”.

The examiner selected a sample of eight security loans reported in the 2004 annual statement to ascertain compliance with collateral requirement specified in SSAP No. 18. The Company could not provide support that it received collateral having a fair value at least equal to 102% of the fair value of the loaned securities at the initiation of the loans.

In addition, three of the five (60%) individual security lending agreements between JPMorgan acting on behalf of the Company and the respective borrowers contain contractual clauses that are inconsistent with SSAP No. 18. The agreements allow the borrowers to deposit only 100% of the market value of the loaned securities as collateral at the initiation of the transaction. SSAP No. 18 requires at least 102% at the initiation of the loan.

The Company’s practices with regard to loaned securities are not in compliance with Paragraph 25(a) of NAIC Statement of Statutory Accounting Principles (“SSAP”) No. 18 of the Accounting Practices and Procedures Manual. The Company does not require collateral of at least 102% of the value of loaned securities at the initiation of such loans. The examiner recommends that the Company fully comply with SSAP No. 18 and that the Company execute security lending agreements containing contractual clauses that are consistent with the collateral requirement of Paragraph 25 of SSAP No. 18.

With respect to crediting additional interest on annuities above the rates guaranteed in such contracts, Section 4232(a)(2) of the New York Insurance Law states:

“No such additional amounts shall be guaranteed or credited except upon: (i) reasonable assumptions as to investment income, mortality, and expenses; (ii) a basis equitable to all contract holders of a given class; and (iii) written criteria approved by the board of directors of the company or a committee thereof.”

During the examiner’s review of annuities, it was noted that the Company credited additional amounts to annuity contracts issued during the examination period. There was no evidence that the Company’s board of directors approved any written criteria for determining the

credited rates of its annuities, which were in excess of the guaranteed rate, during the examination period.

The Company violated Section 4232(a)(2) of the New York Insurance Law for crediting additional amounts on annuity contracts without written criteria approved by the board of directors of the Company.

The following is a listing of the principal officers of the Company as of December 31, 2004:

<u>Name</u>	<u>Title</u>
Randall H. Talbot	Chairman and President
Roger F. Harbin	Executive Vice President and Treasurer
Allyn D. Close	Senior Vice President
Jennifer V. Davies	Senior Vice President
Michele M. Kemper*	Vice President
Margaret A. Meister	Chief Actuary
George C. Pagos	Secretary
M. Scott Taylor	Senior Vice President

* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

In January 2005, Oscar C. Tengtio was appointed Executive Vice President. In March 2005, Colleen M. Murphy replaced Roger F. Harbin as Treasurer. Mr. Harbin still holds the position of Executive Vice President. In June 2005, Linda C. Mahaffey was appointed Vice President.

D. 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. The Company primarily writes individual and group annuities. The Company's operations are conducted on a general agency basis. The Company began writing fixed deferred annuities in 1990, but due to the low interest rate environment and lack of profitability, it stopped actively marketing these products in 1998. In 2002, the Company resumed writing individual fixed annuities and experienced significant premium growth. However, in late 2003, the announcement of the sale

of the Company slowed new sales considerably. In January 2005, the Company received new product approvals from the Department and began writing two new products: individual term life and group A&H excess of loss insurance.

In June 2002, the Department approved the Company's request for deregistration of its separate account business to eliminate the financial burden of preparing audited financial statements.

In 2003, an agent from Talbot Agency Inc. and another agent from Annuity Agency of New York produced 77% and 15%, respectively, of the Company's annuity business.

E. Reinsurance

As of December 31, 2004, the Company had reinsurance treaties in effect with Swiss Re Life and Health America Inc. and Connecticut General Life Insurance Company, both of which are authorized reinsurers in New York State. The Company reinsured the guaranteed minimum death benefits of its discontinued variable annuity products on an automatic yearly renewable term basis.

4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth (decline) during the period under review:

	December 31, <u>2001</u>	December 31, <u>2004</u>	Increase (Decrease)
Admitted assets	<u>\$28,618,819</u>	<u>\$174,146,522</u>	<u>\$145,527,703</u>
Liabilities	<u>\$15,464,361</u>	<u>\$154,618,789</u>	<u>\$139,154,428</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	6,500,000	14,000,000	7,500,000
Unassigned funds (surplus)	<u>4,654,458</u>	<u>3,527,733</u>	<u>(1,126,725)</u>
Total capital and surplus	<u>\$13,154,458</u>	<u>\$ 19,527,733</u>	<u>\$ 6,373,275</u>
Total liabilities, capital and surplus	<u>\$28,618,819</u>	<u>\$174,146,522</u>	<u>\$145,527,703</u>

During the first two years (2002 and 2003) of the examination period, the Company experienced substantial growth in annuity considerations written. Its annuity considerations increased from \$41,000 in 2001, to \$55.8 million in 2002, to \$78.8 million in 2003. The premium growth generated the increases in admitted assets and liabilities.

The \$7.5 million increase in gross paid in and contributed surplus was the result of surplus infusions from the Company's parent to maintain the Company's RBC at the 300% level.

The Company's invested assets as of December 31, 2004, exclusive of separate accounts, were mainly comprised of bonds (97.6%).

The Company's entire bond portfolio, as of December 31, 2004, was comprised of investment grade obligations.

The following has been extracted from the Exhibits of Annuities in the filed annual statements for each of the years under review:

	<u>Ordinary Annuities</u>		
	<u>2002</u>	<u>2003</u>	<u>2004</u>
Outstanding, end of previous year	161	1,556	3,155
Issued during the year	1,411	1,673	196
Other net changes during the year	<u>(16)</u>	<u>(74)</u>	<u>(159)</u>
Outstanding, end of current year	<u>1,556</u>	<u>3,155</u>	<u>3,192</u>

As previously stated, the Company experienced substantial growth in individual annuities during the first two years of the examination period. However, due to the announcement of the sale of the Company in late 2003, the Company's individual annuity sales decreased in 2004.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Individual annuities	\$(1,312,387)	\$(53,430)	\$872,037
Group annuities	<u>(52,164)</u>	<u>20,115</u>	<u>9,810</u>
Total	<u>\$(1,364,551)</u>	<u>\$(33,315)</u>	<u>\$881,847</u>

The operating losses in 2002 and 2003 are due to new business surplus strains.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2004, as contained in the Company's 2004 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2004 filed annual statement.

A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2004

Admitted Assets

Bonds	\$167,010,427
Cash, cash equivalents and short term investments	4,080,506
Contract loans	43,417
Receivable for securities	12,996
Investment income due and accrued	2,431,469
Premiums and considerations	
Uncollected premiums and agents' balances in the course of collection	(14)
Net deferred tax asset	171,070
Receivables from parent, subsidiaries and affiliates	103
From Separate Accounts, Segregated Accounts and Protected cell Accounts	<u>396,548</u>
 Total admitted assets	 <u>\$174,146,522</u>

Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$152,194,443
Liability for deposit-type contracts	1,081,662
Contract liabilities not included elsewhere	
Interest maintenance reserve	76,904
Commissions to agents due or accrued	28,311
Transfers to Separate Accounts due or accrued	(2,020)
Current federal and foreign income taxes	7,518
Amounts withheld or retained by company as agent or trustee	654
Remittances and items not allocated	159,496
Miscellaneous liabilities:	
Asset valuation reserve	588,716
Payable to parent, subsidiaries and affiliates	73,591
Payable for securities	12,966
From Separate Accounts statement	<u>396,548</u>
 Total liabilities	 <u>\$154,618,789</u>
 Common capital stock	 \$ 2,000,000
Gross paid in and contributed surplus	14,000,000
Unassigned funds (surplus)	<u>3,527,733</u>
 Total capital and surplus	 \$ <u>19,527,733</u>
 Total liabilities, capital and surplus	 <u>\$174,146,522</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Premiums and considerations	\$55,824,384	\$77,105,850	\$11,144,211
Investment income	2,303,915	6,591,265	8,114,441
Miscellaneous income	<u>19,566</u>	<u>40,207</u>	<u>153,852</u>
 Total income	 <u>\$58,147,865</u>	 <u>\$83,737,322</u>	 <u>\$19,412,504</u>
Benefit payments	\$ 1,975,363	\$ 4,420,800	\$ 8,016,280
Increase in reserves	54,806,819	74,496,267	8,551,422
Commissions	1,660,624	2,998,775	468,523
General expenses and taxes	1,398,191	1,441,162	1,341,203
Net transfers to (from) Separate Accounts	<u>(52,864)</u>	<u>(30,837)</u>	<u>(64,485)</u>
 Total deductions	 <u>\$59,788,133</u>	 <u>\$83,326,167</u>	 <u>\$18,312,943</u>
Net gain (loss)	\$ (1,640,268)	\$ 411,156	\$ 1,099,561
Federal and foreign income taxes incurred	<u>(275,716)</u>	<u>444,469</u>	<u>217,714</u>
 Net gain (loss) from operations before net realized capital gains	 \$ (1,364,552)	 \$ (33,313)	 \$ 881,847
Net realized capital gains (losses)	<u>(251,782)</u>	<u>4,233</u>	<u>(25,111)</u>
 Net income	 <u>\$ (1,616,334)</u>	 <u>\$ (29,080)</u>	 <u>\$ 856,736</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Capital and surplus, December 31, prior year	<u>\$13,154,458</u>	<u>\$11,642,733</u>	<u>\$15,879,163</u>
Net income	\$ (1,616,334)	\$ (29,080)	\$ 856,736
Change in net deferred income tax	72,652	338,104	26,898
Change in non-admitted assets and related items	(33,854)	(235,379)	(21,486)
Change in asset valuation reserve	60,934	(337,214)	(213,580)
Cumulative effect of changes in accounting Principles	4,877	0	0
Surplus adjustments Paid in	<u>0</u>	<u>4,500,000</u>	<u>3,000,000</u>
Net change in capital and surplus for the year	<u>\$ (1,511,725)</u>	<u>\$ 4,236,431</u>	<u>\$ 3,648,568</u>
Capital and surplus, December 31, current year	<u>\$11,642,733</u>	<u>\$15,879,163</u>	<u>\$19,527,731</u>

6. 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 51.1 of Department Regulation No. 60 states in part:

“The purposes of this Part are . . .

(b) To protect the interest of the public by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of life insurance policies and annuity contracts; by making available full and clear information on which an applicant for life insurance or annuities can make a decision in his 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 51.5(c) of Department Regulation No. 60 states in part:

“Where a replacement has occurred or is likely to occur . . .

(2) . . . Submit to the insurer whose policy or contract is being replaced a list of all life insurance policies or annuity contracts proposed to be replaced, as well as the policy or contract number for such policies or contracts, together with the proper authorization from the applicant, and request the information necessary to complete the "Disclosure Statement" . . .

(3) Present to the applicant, not later than at the time the applicant signs the application, the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" and a completed "Disclosure Statement" signed by the agent or broker in the form prescribed by the Superintendent of Insurance and leave copies of such forms with the applicant for his or her records . . . ”

Section 51.6(a) of Department Regulation No. 60 states in part:

“Each insurer shall:

(1) Inform and train its agents and brokers with respect to its requirements of this Part . . .

(3) Maintain signed and completed copies of the “Definition of Replacement” for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later . . .”

Section 51.6(b) of Department Regulation No. 60 states, in part:

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

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the "Disclosure Statement", and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part;

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed "Disclosure Statement";

(5) Submit quarterly reports within thirty days of the end of each quarter, beginning at the end of the first full calendar quarter after the effective date of this Part, to the Superintendent of Insurance, indicating which insurers, if any, have failed to provide the information as required in Section 51.6(c)(2) herein;

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract; proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts;" the signed and completed "Disclosure Statement"; and the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced indexed by agent and broker, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later . . .”

Section 51.7 of Department Regulation No. 60 states in part:

“(b) No insurer, agent, broker, representative, officer, or employee of an insurer or any other licensee of this Department 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 contractholders”

The examiner reviewed 33 individual annuity replacements representing most of the replacements that occurred during the examination period. The review revealed the following multiple violations of Department Regulation No. 60:

1. In three of the replacements, the applicants were allowed to sign the policy application and the disclosure statement before the Company requested the information to complete the disclosure statement from the replaced companies.

The Company violated Section 51.1(b) of Department Regulation No. 60 by allowing applicants to sign the application and the disclosure statement before obtaining the information necessary to complete the disclosure statement from the replaced company, thereby failing to make available full and clear information on which an applicant for annuity contracts can make a decision in his own best interest.

2. In all cases, the Company did not complete the comparison page of the disclosure statement.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 for failing to examine the disclosure statements to ascertain that they met the requirements of the Regulation.

3. In six cases, the applicants signed the applications before signing the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" ("important notices") and the completed disclosure statements.

The Company violated Section 51.5(c)(3) of Department Regulation No. 60 for presenting the important notices and the completed disclosure statements to the applicants after the applicants had already signed the applications.

4. In three of the replacements, the examiner could not find, nor could the Company provide, any evidence that the Company submitted to the replaced companies any proposal, including the sales material used in the sale of the proposed annuity contract, and the completed disclosure statements within 10 days of receipt of the application.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 for failing to furnish the replaced insurer with a copy of any proposal, including the sales material used in the sale of the proposed annuity contract and the completed disclosure statement within ten days of receipt of the application.

5. Seventeen of the 33 replacements reviewed were incomplete. The files did not contain the signed definition of replacements, the important notices, the completed disclosure statements and the notification of replacement to the insurer whose annuity contract is to be replaced.

The Company violated Section 51.6(a)(3) of Department Regulation No. 60 for failing to maintain signed and completed copies of the “definition of replacement”. The Company also violated Section 51.6(b)(6) of Department Regulation No. 60 for failing to maintain copies of proof of receipt by the applicant of the important notices, the signed and completed disclosure statements, and the notification of replacement to the insurer whose annuity contract is to be replaced, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the Department, whichever is later.

6. Based on the results of this review it does not appear that the Company’s agents were adequately trained with respect to the requirements of Department Regulation No. 60. The Company violated Section 51.6(a)(1) of Department Regulation No. 60 for failing to adequately inform and train its agents and brokers with respect to the requirements of Department Regulation No. 60.

7. The Company did not submit to the Superintendent during the examination period, any quarterly reports indicating which insurers, if any, had failed to provide the required information as referred to in Section 51.6(c)(2) of Department Regulation No. 60.

The examiner recommends that the Company submit quarterly replacement reports to the Superintendent, within thirty days of the end of each quarter, indicating which insurers, if any, have failed to provide the information as required by Section 51.6(c)(2) of the Regulation.

As a result of the numerous violations noted above, the Company is also in violation of Section 51.7(b) of Department Regulation No. 60 by failing to fully comply with the orderly

working of the Regulation in accomplishing its intended purpose in the protection of contract holders.

The examiner recommends that the Company implement a training program to inform and train its employees, agents and brokers with respect to the requirements of Department Regulation No. 60.

The examiner also recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60.

As a result of the aforementioned examination findings involving violations of Department Regulation No. 60, the Company performed a review of all replacement transactions made from January 1, 2001 through August 11, 2005. The review focused on compliance with Department Regulation No. 60 and the identification of contract holders that may have been adversely affected by the Company's lack of providing timely, complete and accurate disclosure during the sales process.

The Department and the Company have agreed on remediation plans for those contract holders that have been adversely affected, as described above by the examiner.

B. Underwriting and Policy Forms

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

Based upon the sample reviewed, no significant findings were noted.

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 4240(e) of the New York Insurance Law states, in part:

“(e) No authorized insurer shall make any such agreement in this state providing for the allocation of amounts to a separate account until such insurer has filed with the superintendent a statement as to its methods of operation of such separate account and the superintendent has approved such statement . . . An amendment

of any such statement that changes the investment policy of a separate account shall be treated as an original filing”

The Company allocated funds to eight separate account sub-accounts that were not included in the Company’s Separate Account S Plan of Operation filed with the Superintendent.

The examiner recommends that the Company file an amended Separate Account S Plan of Operation to include the eight separate account sub-accounts not included in the plan previously filed with the Superintendent.

Section 216.11 of Department Regulation No. 64 states in part:

“ . . . To enable department personnel to reconstruct an insurer’s activities, all insurers subject to the provisions of this Part must maintain within each claim file all communications, transactions, notes and work-papers relating to the claim. All communications and transactions, whether written or oral, emanating from or received by the insurer shall be dated by the insurer. Claim files must be maintained that all events relating to a claim can be reconstructed by the Insurance Department examiners. Insurers shall either make a notation in the file or retain a copy of all forms mailed to claimants”

As part of the review of the Company’s treatment of policyholders, the examiner selected nine death claims and ten annuity surrender policy files. All the death claim and annuity surrender files were incomplete. The examiner could not determine the effective date of the surrender, contract value at inception of contract, contract value at the time of the surrender and whether surrender penalties were applicable. Similarly, for death claims, the examiner could not determine the amount of the death claim proceeds, the death claim beneficiaries, the claim payment date and the date that all the necessary information to process the claim was received by the Company.

The Company violated Section 216.11 of Department Regulation No. 64 for failing to maintain claim files so that events relating to a claim can be reconstructed by the Department examiner. A similar violation appeared in the prior report on examination.

Section 243.2(a) of Department Regulation No. 152 states:

“Records required for examination purposes and retention period

In addition to any other requirement contained in Insurance Law Section 325, any other section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain its claims, rating, underwriting marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part”.

Section 243.3(c) of Department Regulation No. 152 states:

“An insurer shall establish and maintain a records retention plan. The plan shall include a description of the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records. Such plan shall be provided to the superintendent upon request. The insurer shall certify the accuracy of any records that are provided in accordance with its record retention plan”.

The Company’s records retention plan has retention periods that are inconsistent with Department Regulation No. 152. For example, under the corporate compliance section of the plan, the Company is required to retain its internal audit reports for five years. Records should be retained for six calendar years or until after the filing of the report on examination, whichever is longer.

The examiner recommends that the Company revise its records retention plan to comply with the record retention timeframes specified in Department Regulation No. 152.

7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 1202 of the New York Insurance Law and its by-laws by failing to maintain the minimum number of directors.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 3C of this report)</p>
B	<p>The Company violated Section 243.2(b)(4) of Department Regulation No. 152 by failing to maintain claim files for six calendar years or until after the filing of the report on examination in which the claim file was subject to review, whichever is longer.</p> <p>The Company provided all the claim files requested but a number of them were incomplete as noted below.</p>
C	<p>The Company violated Section 216.11 of Department Regulation No. 64 by failing to maintain claim files so that events relating to a claim can be reconstructed by the Department examiners.</p> <p>A similar violation appears in this report. (See item 6C of this report)</p>

8. SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that in the future the Company provide notice to the Superintendent at least thirty days prior to accepting investments of surplus contributions from its parent or from any other affiliate.	6 – 7
B	The Company violated Section 1505(d)(3) of the New York Insurance Law for failing to notify the Superintendent of its intention to receive investment advisory and accounting and recordkeeping services from WMA.	7
C	The Company violated Section 1202(a)(2) of the New York Insurance Law and its by-laws by failing to maintain the minimum number of 13 directors.	9
D	Comment that three of the four independent directors serving on the board are affiliated with three institutional investors that acquired an interest in the Company from Safeco; two of which serve on the Company's independent committee.	10
E	The examiner recommends that the Company institute procedures to obtain at least annually, conflict of interest statements from its board of directors and "key employees".	10
F	The Company violated Section 1411(a) of the New York Insurance Law by engaging in security lending activities without the authorization or approval of its board of directors or a committee thereof, responsible for making such loans.	10

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The examiner recommends that the Company fully comply with SSAP No. 18 and that the Company execute security lending agreements containing contractual clauses that are consistent with the collateral requirement of Paragraph 25 of SSAP No. 18.	10 – 11
H	The Company violated Section 4232(a)(2) of the New York Insurance Law for crediting additional amounts on annuity contracts without written criteria approved by the board of directors of the Company.	11 – 12
I	The Company violated Section 51.1(b) of Department Regulation No. 60 by allowing the applicants to sign the application and the disclosure statement before obtaining the information necessary to complete the disclosure statement from the replaced company, thereby failing to make available full and clear information on which an applicant for annuity contracts can make a decision in his own best interest.	22
J	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 for failing to examine the disclosure statements to ascertain that they met the requirements of the Regulation.	22
K	The Company violated Section 51.5(c)(3) of Department Regulation No. 60 for presenting the important notices and the completed disclosure statements to the applicants after the applicants had already signed the applications.	22
L	The Company violated Section 51.6(b)(4) of Department Regulation No. 60 for failing to furnish the replaced insurer with a copy of any proposal, including the sales material used in the sale of the proposed annuity contract and the completed disclosure statement within ten days of receipt of the application.	22
M	The Company violated Section 51.6(a)(3) of Department Regulation No. 60 for failing to maintain signed and completed copies of the “definition of replacement”.	23
N	The Company violated Section 51.6(b)(6) of Department Regulation No. 60 for failing to maintain copies of proof of receipt by the applicant of the important notices, the signed and completed disclosure statements, and the notification of replacement to the insurer whose annuity contract is to be replaced, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the Department, whichever is later.	23

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
O	The Company violated Section 51.6(a)(1) of Department Regulation No. 60 for failing to adequately inform and train its agents and brokers with respect to the requirements of Department Regulation No. 60.	23
P	The examiner recommends that the Company submit quarterly replacement reports to the Superintendent within thirty days of the end of each quarter, indicating which insurers, if any, have failed to provide the information as required by Section 51.6(c)(2) of the Regulation.	23
Q	The Company violated Section 51.7(b) of Department Regulation No. 60 by failing to fully comply with the orderly working of the Regulation in accomplishing its intended purpose in the protection of contract holders.	23 – 24
R	The examiner recommends that the Company implement a training program to inform and train its employees, agents and brokers with respect to the requirements of Department Regulation No. 60.	24
S	The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60.	24
T	The examiner recommends that the Company file an amended Separate Account S Plan of Operation to include the eight separate account sub-accounts not included in the plan previously filed with the Superintendent.	24 – 25
U	The Company violated Section 216.11 of Department Regulation No. 64 for failing to maintain claim files so that events relating to a claim can be reconstructed by the Department examiner.	25
V	The examiner recommends that the Company revise its records retention plan to comply with the record retention timeframes specified in Department Regulation No. 152.	25 – 26

APPOINTMENT NO. 22339

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, HOWARD MILLS, Acting Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

ROBERTO PARADIS

as a proper person to examine into the affairs of the

FIRST SYMETRA NATIONAL LIFE INSURANCE COMPANY OF NEW YORK

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

COMPANY

with such other information as he shall deem requisite.

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

this 7th day of March, 2005



HOWARD MILLS

Acting Superintendent of Insurance

A handwritten signature in cursive script that reads "Howard Mills".

Acting Superintendent