



STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF THE
AVIVA LIFE INSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2004

DATE OF REPORT:

MARCH 24, 2006

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EXAMINER:

EDMUND TAGOE

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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

March 24, 2006

Honorable Howard Mills
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22411, dated September 9, 2005 and annexed hereto, an examination has been made into the condition and affairs of Aviva Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 100 Corporate Parkway, Buffalo, New York 14226.

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 multiple sections of Department Regulation No. 60 by failing to: maintain a list of all life insurance policies or annuity contracts proposed to be replaced as part of the policy record (i.e. the agent authorization form - Form NY 2060); require with, or as part of, each application proof of receipt by the applicant of the Important Notice and/or the completed Disclosure Statement; reject the application in situations where the Important Notice and/or Disclosure Statement forms were not received with the application; and examine and ascertain that Disclosure Statements completed by its agents and submitted with applications during the examination period were accurate and complete. (See item 6A of this report)

The Company violated Section 3209(b)(1) of the New York Insurance Law by failing to provide prospective applicants written preliminary information required by Section 3209 of the New York Insurance Law and Section 53-2.1 of Department Regulation No. 74 at or prior to the time an application is taken. (See item 6B of this report)

The Company violated Section 3209(g) of the New York Insurance Law and Section 53-1.4(a) of Department Regulation No. 74 by failing to maintain a complete compliance file at its home office for each policy form, containing one specimen copy of the preliminary information form and the policy summary form authorized by the insurer. (See item 6B of this report)

The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating premium notices that failed to contain required language pertaining to policy termination or lapse when the premium is not paid on or before the due date shown or within the specified grace period of the policy. (See item 6C of this report)

The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(a) of Department Regulation No. 74 by failing to provide annual reports or cash surrender value notices to policyholders. (See item 6C of this report)

The Company violated Section 219.4(a)(1) of Department Regulation No. 34-A by disseminating an illustration to New York policyholders that is misleading because it depicts an accelerated death benefit rider that is not available under the policy forms that it was used to illustrate (policy forms NYP 2188 and NYP 2189) or approved for use in New York. (See item 6A of this report)

The Company violated Section 219.4(p) of Department Regulation No. 34-A by disseminating advertisements in New York that referenced incorrect policy forms. (See item 6A of this report)

The Company violated Section 219.4(m) of Department Regulation No. 34-A by failing to disclose that issuance of the Company's "Easy Issue" products and the payment of benefits there under may depend upon the answers given in the application and the truthfulness thereof. (See item 6A of this report)

The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain a complete advertising file containing a specimen copy of every printed, published or prepared advertisement, with a notation indicating the manner and extent of distribution. (See item 6A of this report)

The Company violated Section 4228(d)(5)(D) of the New York Insurance Law by paying total compensation on premiums and considerations recorded within a period of twelve consecutive months on business written under the supervision of a general agent, on business not personally produced by such agent, greater than ninety-nine percent of all qualifying first year premiums. (See item 9 of this report)

The Company violated Section 4228(f)(5) of the New York Insurance Law by failing to notify the Superintendent that it made one or more payments exceeding the limits in subsection (d) and by failing to report certain information pertaining to the excess compensation paid to HSBC. (See item 9 of this report)

The Company violated Department Regulation No. 33 by failing to: provide records with sufficient detail to show fully the system and actual basis of allocation for expenses that were allocated between companies and by line of business; and treat expense allocations in the same manner between companies and lines of business. (See item 4 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
- 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 and recommendation contained in the prior report on examination. The results of the examiner's review are contained in item 14 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

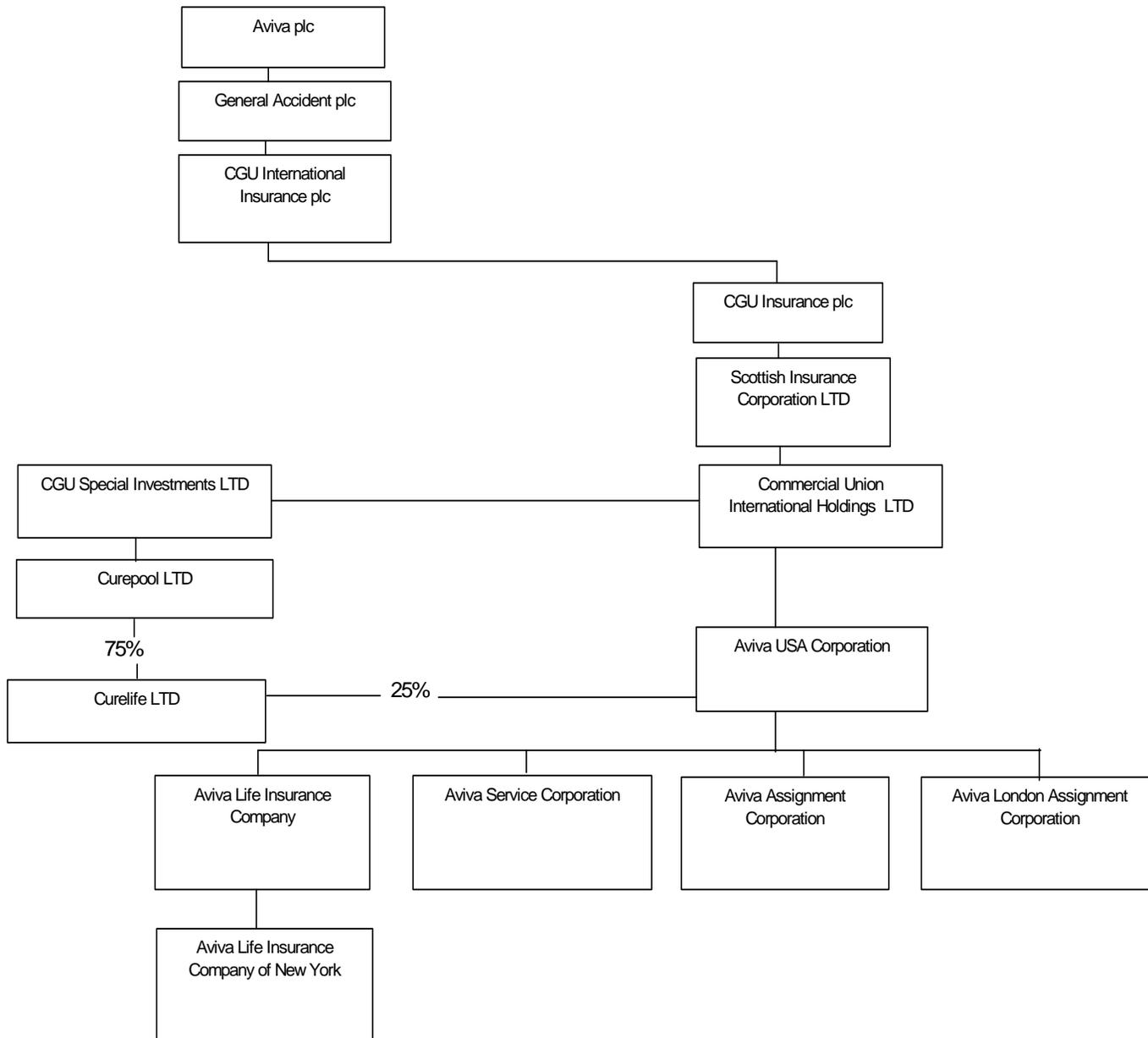
The Company was incorporated as a stock life insurance company under the laws of New York on March 25, 1981 and licensed to do an insurance business on April 6, 1981. The Company was originally incorporated as CU Life Insurance Company of New York. The Company changed its name to CGU Life Insurance Company of New York effective November 1, 1999. Effective March 24, 2004, the Company completed another name change to Aviva Life Insurance Company of New York.

Initial resources of \$6,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$4,000,000 were provided through the sale of 20,000 shares of common stock, with a par value of \$100, for \$300 per share. The Company received capital contributions totaling \$6,000,000 from its parent during the examination period. As of December 31, 2004, the Company reported total common capital stock and paid in and contributed surplus in the amounts of \$2,000,000 and \$24,100,000, respectively.

B. Holding Company

The Company is a wholly owned subsidiary of ALIC, a Delaware life insurance company. ALIC is in turn a wholly owned subsidiary of Aviva USA Corporation, a Delaware holding company. The ultimate parent of the Company is Aviva plc, a United Kingdom holding company.

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



The Company had one service agreement in effect with an affiliate during the examination period.

Type of Agreement/ Department File No.	Effective Date	Provider of Service	Recipient of Service	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Service Agreement #29293	12/28/2000	Aviva Service Corporation	the Company	marketing support and product development, producer management, reinsurance and underwriting, policyowner and contract holder services, claims processing and payment, actuarial/financial services, information/technology, legal services and government relations, general services, human resources	2002 (\$7,550,675) 2003 (\$8,066,058) 2004 (\$9,024,110)

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

The Company does not have any employees of its own; all services are provided by the Aviva Service Corporation through the aforementioned service agreement.

The Company files its federal income tax return on a consolidated basis with other members of its holding company system. In connection therewith, the Company participates in a written federal tax allocation agreement effective May 25, 2001, with its parent, ALIC.

In December 2004, the Company filed with the Department the aforementioned tax allocation agreement that has been in effect since May 2001. The Department advised the Company that the tax allocation agreement did not meet certain guidelines as outlined in Department Circular Letter No. 33(1979).

The examiner recommends that the Company revise its tax allocation agreement to comply with the guidelines in Department Circular Letter No. 33(1979) and that the Company notify the Department within 30 days of such revision.

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 . . . ”

On December 30, 2003 and December 10, 2004, the parent, ALIC, made two surplus contributions to the Company through cash contributions in the amount of \$3,000,000 each (for a total of \$6,000,000). The Company failed to provide notice to the Superintendent of the \$3,000,000 surplus contributions in 2003 and 2004. The transactions involved approximately 0.70% and 0.64% of the Company's 2003 and 2004 admitted assets, respectively, and are considered investments under Section 1505(d) of the Insurance Law.

The examiner recommends that the Company notify the Superintendent prior to any surplus contributions by the parent in the future.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 13 members and that the number of directors for each corporate year shall be fixed by vote at the meeting at which they are elected. As of December 31, 2004, the board of directors consisted of 13 members. Meetings of the board are held quarterly, with one meeting immediately following the annual meeting of stockholders.

The 13 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>
Hans L. Carstensen, III Norwell, MA	President and Chief Executive Officer Aviva Life Insurance Company Aviva Life Insurance Company of New York	1996
Thomas O. Clark * Commack, NY	Retired Vice President and New York City Regional Manager CGU Property Casualty Companies	1990

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Margot R. Cronin Boston, MA	Senior Vice President and Chief Operating Officer Aviva Life Insurance Company of New York	2002
Bruce D. Drucker * Wellfleet, MA	Retired Managing Partner Rivkin, Radler & Kremer	1992
John R. Dunne * Spencertown, NY	Counsel Whiteman Osterman & Hanna	1995
Pauline E. Jenkins Newton, MA	Vice President of Structured Settlements Aviva Life Insurance Company of New York	2001
Richard J. Kypta Duxbury, MA	Senior Vice President Aviva Life Insurance Company Aviva Life Insurance Company of New York	1997
Kevin J. McCoy Seekonk, MA	Vice President, Agency Marketing Aviva Life Insurance Company of New York	2000
Mark J. McVeigh Charlestown, MA	Vice President, Financial Institution Marketing Aviva Life Insurance Company of New York	2000
Diane D. Posnak* New York, NY	Retired Managing Director Pearl Meyer & Partners, Inc.	1993
Alan J. Rein* Scarsdale, NY	Partner Kurzman & Eisenberg	1981
Martin Sheerin Milton, MA	Senior Vice President and Chief Actuary Aviva Life Insurance Company Aviva Life Insurance Company of New York	2001
Jeffrey J. Whitehead Hingham, MA	Senior Vice President, Treasurer and Chief Financial Officer Aviva Life Insurance Company of America Aviva Life Insurance Company of New York	2002

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

In January 2005, Margot R. Cronin resigned from the board and in February 2005, Sean P. O'Brien was elected director. In August 2005, Kevin J. McCoy resigned from the board and

was replaced by Holly A. Burgess. In October 2005, Thomas O. Clark resigned from the board and was replaced by Kevin A. McCabe. In November 2005, Jeffrey Lobo was appointed as a director.

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

“Every domestic insurer . . . shall . . . keep and maintain at its principal office in this state its charter and by-laws . . . and if a domestic corporation the minutes of any meetings of its shareholders, policyholders, board of directors and committees thereof....”

A physical inspection of the records maintained at the home office indicated that the Company failed to maintain the minutes of the board of directors meetings held in February and May of 2005.

The Company violated Section 325(a) of the New York Insurance Law by failing to maintain the minutes of the board of directors meetings held in February and May of 2005 at its home office in Buffalo, New York.

Section 4211 of the New York Insurance Law states, in part:

“(a) No election of directors of a domestic stock life insurance company shall be valid unless a copy of the notice of election shall have been filed in the office of the superintendent at least ten days before the day of such election in addition to the service thereof, as required by section six hundred five of the business corporation law.

(b) Whenever any directors of such a company shall have resigned and successors shall have been chosen pursuant to the provisions of the by-laws, such successors shall not take office nor exercise their duties until ten days after written notice of their election shall have been filed in the office of the superintendent. . . .”

The examiner reviewed the Department's records for filings made in accordance with Section 4211 of the New York Insurance Law and noted that no Section 4211(a) or Section 4211(b) filings were received by the Department during the examination period. The Company provided copies of three filings dated during the examination period that were made using an

incorrect Department address. Two of the filings were made under Section 4211(a) of the New York Insurance Law and one filing under 4211(b) of the New York Insurance Law. The filings were not made in a timely manner (notifications were filed after the elections had already been held or after the successor had taken office).

The Company violated Section 4211(a) of the New York Insurance Law by failing to file a copy of the notice of election with the Superintendent at least ten days before the day of such election.

The Company violated Section 4211(b) of the New York Insurance Law by failing to file a written notice of the election of directors with the Superintendent at least ten days prior to such successors taking office and exercising their duties.

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

Name	Title
Hans L. Carstensen, III	President and Chief Executive Officer
Jeffery J. Whitehead	Senior Vice President, Treasurer and Chief Financial Officer
Martin Sheerin	Senior Vice President and Chief Actuary
Margot R. Cronin	Senior Vice President and Chief Operating Officer
Richard J. Kypta	Senior Vice President
Gerard J. Guimond	Vice President, General Counsel and Secretary
William J. Ball	Vice President and Chief Information Officer
Peter Colli	Vice President and Chief Compliance Officer
Pauline E. Jenkins	Vice President of Structured Settlements
Mark J. McVeigh	Vice President, Financial Institution Marketing
Sterling W. Nowka*	Vice President
Sean P. O'Brien	Vice President, Customer Service

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

In January 2005, Richard J. Kypta replaced Margot R. Cronin as Chief Operating Officer.

In October 2004, Sterling W. Nowka resigned from the board, but he continued to work as the Company's Consumer Services Officer until the close of the administrative office in Buffalo in May 2005. In October 2005, the Company appointed Gerard J. Guimond to replace Sterling W. Nowka as the designated consumer services officer. In February 2006, the Company appointed Paul Glazebrook to replace Mr. Guimond as the Company's designated consumer services officer.

The Company is reminded of its responsibility under Section 216.4(c) of Department Regulation No. 64 to ensure that a Consumer Services Officer is designated with the Department at all times.

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 two states, New York and Massachusetts. In 2004, 98.4% of life premiums were received from New York; 51.3% and 46.7% of annuity considerations were received from New York and Massachusetts, respectively; and 89.8% of deposit funds were received from Massachusetts. Policies are written on a non-participating basis.

The Company's primary focus is on annuities and life products, with life products comprising 73.7% of the total premiums and considerations in 2004. The Company's agency operations are conducted on a general agency basis. Approximately 95% of the Company's business is written through financial institutions. Structured settlements (single premium immediate annuities) are written by brokers.

E. Reinsurance

As of December 31, 2004, the Company had reinsurance treaties in effect with nine companies, of which eight were authorized or accredited.

The Company's life business is reinsured on a coinsurance, modified coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$300,000. The total face amount of life insurance ceded as of December 31, 2004 was \$1,093,529,574, which represents 43.6% of the total face amount of life insurance in force.

Effective January 1, 2000, the Company ceded a 50% first dollar quota share of all policies sold through HSBC Insurance Agency ("HSBC") to Marmid Life Insurance Company ("Marmid"), an unauthorized reinsurer. In September of 2004, the Company and Marmid executed a substitution of parties agreement whereby Household Life Insurance Company

(“Household”), an unauthorized reinsurer, undertook the rights, obligations and liabilities of Marmid under the reinsurance agreement. Household is an affiliate of HSBC bank.

The Company’s universal life policies are reinsured on a yearly renewable term basis. Whole life policies sold by HSBC Insurance Agency are reinsured on a 25% modified coinsurance basis with Household Life Insurance Company up to the Company’s retention limit, with the excess reinsured on a yearly renewable term basis by a pool of four reinsurers namely, Reinsurance Group of America, Munich American Reinsurance Company, Swiss Re Life and Health America, and Canada Life Assurance Company. Whole life policies sold by other financial institutions are reinsured on a yearly renewable term basis by the same pool of reinsurers.

The Company’s term life policies sold by HSBC for amounts under \$250,000 are reinsured on a modified coinsurance basis up to the retention limit and on a 50% coinsurance basis for amounts over the retention limit to Canada Life Assurance Company. Term policies sold by agencies and other financial institutions are reinsured on a 50% coinsurance basis. The Company’s guaranteed issue policies sold by HSBC are reinsured on a 50% modified coinsurance basis, however guaranteed issue policies sold by other banks are not reinsured. The maximum face on guaranteed issue policies is \$25,000.

The Company assumed \$8,236,329 of annuity business from its parent, ALIC, as of December 31, 2004. This amount represents 4% of annuity business in force.

Section 127.3(a) of Department Regulation No. 102 states:

“No reinsurance agreement or amendment to an agreement may be used to take reserve credit by reducing a liability or by establishing an asset in any financial statement filed with the superintendent, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the ‘as of date’ of the financial statement.”

A review of the treaties that were effective during the examination period revealed that the Company had a total of six treaties in effect that were not executed by both parties. Five treaties were effective in 2002; however, both parties did not execute four out of the five treaties until 2004. The fifth treaty was not executed until December 2003. One other treaty went into effect on October 10, 2003 and was not executed until November 9, 2005. The Company took reserve credits under these treaties in 2002 and 2003.

The Company violated Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under treaties that were not duly executed by both parties no later than the 'as of date' of the financial statement in which credit(s) was taken.

The examiner's review of the Company's reinsurance treaties effective during the examination period revealed that one of the treaties provided by the Company was a bulk accidental death benefit reinsurance agreement between ALIC and ReliaStar Life Insurance Company (ING Re division) ("ReliaStar") effective January 1, 2004 and executed on September 20, 2005. No reinsurance agreement between the Company and ReliaStar was provided. Upon inquiry, the Company later submitted an unexecuted (draft) reinsurance treaty between the Company and ReliaStar.

The Company reported reinsurance ceded to ReliaStar for accidental death benefits associated with the Company's in force individual life insurance policies on Schedule S, Part 3, Section 1 of its 2004 filed annual statement when in fact there was no contract executed between the two parties.

The examiner recommends that the Company enter into a written contract with ReliaStar.

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>328,914,107</u>	\$ <u>465,306,971</u>	\$ <u>136,392,864</u>
Liabilities	\$ <u>296,831,028</u>	\$ <u>435,901,968</u>	\$ <u>139,070,940</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	18,100,000	24,100,000	6,000,000
Group life contingency reserve	12,258	0	(12,258)
Unassigned funds (surplus)	<u>11,970,821</u>	<u>3,305,003</u>	<u>(8,665,818)</u>
Total capital and surplus	\$ <u>32,083,079</u>	\$ <u>29,405,003</u>	\$ <u>(2,678,076)</u>
Total liabilities, capital and surplus	\$ <u>328,914,107</u>	\$ <u>465,306,971</u>	\$ <u>136,392,864</u>

The Company's invested assets as of December 31, 2004, were mainly comprised of bonds (97.1%).

The majority (98.4%) of the Company's bond portfolio, as of December 31, 2004, was comprised of investment grade obligations.

The increase in the Company's admitted assets is primarily attributable to an increase in bonds as a result of increased sales of the Company's single premium universal life products.

The Company discontinued its group life operations in 2002 and the group life contingency reserve was eliminated.

The decrease in unassigned funds is a direct result of approximately \$7.2 million in net losses incurred over the three-year period.

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 statement.

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Ordinary:			
Life insurance	\$(6,472,333)	\$(2,878,184)	\$(3,042,229)
Individual annuities	2,153,257	694,311	1,153,418
Supplementary contracts	<u>293,021</u>	<u>11,904</u>	<u>52,103</u>
Total ordinary	\$(<u>4,026,055</u>)	\$(<u>2,171,969</u>)	\$(<u>1,836,708</u>)
Group:			
Life	\$ (40,667)	\$ 22,297	\$ (205,433)
Annuities	<u>364,426</u>	<u>(953,359)</u>	<u>(79,382)</u>
Total group	\$ <u>323,759</u>	\$ <u>(931,062)</u>	\$ <u>(284,815)</u>
Accident and health:			
Group	\$ (611)	\$ (20,792)	\$ 0
Other	<u>0</u>	<u>0</u>	<u>1,065</u>
Total accident and health	\$ <u>(611)</u>	\$ <u>(20,792)</u>	\$ <u>1,065</u>
Total	\$(<u>3,702,907</u>)	\$(<u>3,123,823</u>)	\$ <u>2,120,458</u>

In 2001, the Company reported a \$563,849 net loss from operations for its ordinary life operations. The pronounced decline in profitability of the Company's ordinary life business between 2001 and 2002 is primarily due to the surplus strain associated with the strong sales of traditional and single premium universal life insurance products combined with higher operating expenses. When the ultimate parent, Aviva plc, decided to divest its property and casualty operations around the globe, a restructuring of existing resources and build out of the infrastructure that services life operations in the United States was required. This restructuring caused an increase in general expenses for the Company and its parent and impacted overall operating earnings of the Company over the course of the examination period.

Net investment income was distributed to major annual statement lines of business using a segmentation method.

Section 91.5(b) of Department Regulation No. 33 states, in part:

“A licensed life insurer proposing to adopt an investment year method in the distribution of net investment income, or to revise such a method already in effect, shall on or before November 1 of the first year for which such method or revision is to be used file with the superintendent a full description of its plan . . . If the company’s method . . . contemplates the use of a method other than the investment year method . . . such deviations or use require the approval of the superintendent as being equitable and as being necessary for reasons of feasibility before the method can be adopted.”

In the prior examination period, the Company used the mean reserve method to allocate net investment income to annual statement lines of business. During the current examination period, the Company began using a segmentation method. A full description of its plan was not filed with the Superintendent.

The Company violated Section 91.5(b) of Department Regulation No. 33 by using a segmentation method to allocate net investment income to annual statement lines of business without filing the method with the Superintendent prior to its use.

Section 91.4(a) of Department Regulation No. 33 states, in part:

“ . . . (2) Each life insurer shall maintain records with sufficient detail to show fully:

- (i) the system actually used for allocation of income and expenses;
- (ii) the actual bases of allocation;
- (iii) the actual monetary distribution of the respective items of income, salaries, wages, expenses, and taxes to . . .

(c) annual statement lines of business,
 (d) companies, and
 (e) a recapitulation and reconciliation of items . . . (c) and (d) with the insurer’s books of account and annual statement.

(3) Such records shall be classified and indexed in such form as to permit ready identification between the item allocated and the basis upon which it was allocated, and shall be maintained in such a manner as to be readily accessible for examination . . .

(5) Allocations of income and expenses between companies shall be treated in the same manner as if made for major annual statement lines of business.”

Section 91.4(f)(5) of Department Regulation No. 33 states, in part:

“General indexes such as premium volume, number of policies, and insurance in force shall not be used as basis for distributing costs among major annual statement lines of business, except where the incidence of cost is closely related to

such general indexes, or except where there is no more appropriate basis for measurement. . . .”

Based upon the information provided by the Company, it appears that general expenses were primarily allocated between companies on the basis of general indexes such as policy counts (in force and new issues) and statutory policy reserves. Where general indexes were used as the driver, expenses associated with each cost center were allocated according to a percentage that was calculated by taking a ratio of New York in force counts, new issue policy counts, or policy reserves to the total number of in force counts, new issue policy counts or policy reserves for both the Company and the parent, Aviva Life Insurance Company. The use of general indexes such as policy counts, policy reserves etc. to allocate expenses is allowed only where the incidence of cost is closely related to such general indexes, or except where there is no more appropriate basis for measurement. The Company failed to provide any documentation to show that its costs were closely related to such general indexes and that there was no more appropriate basis to allocate expenses.

There were a small number of cost centers that did not use general indexes to allocate expenses. Instead the allocation of expenses was based upon the Total Formula Expense Allowance (“Formula”). Expenses attributable to project management and the chief operating officer were among a few other expenses that were allocated between companies based on the Formula. This Formula was derived from certain pricing assumptions. This method, which resembles the weighting of general indexes such as premiums, policy counts and face values, was used in order to arrive at a total expense allowance rate or factor. The Company stated that the calculation is used as a way to build allocation percentages of the actual expenses that relate to the amount of work involved in supporting the various products. The Company further stated that it is their position that the allocation reasonably allocates the expenses involved based upon the activity involved in supporting those products. Partial documentation to support these pricing assumptions (administrative, underwriting, and marketing) was provided to the examiner. However, the Company failed to provide detailed support as to how the Company determined the actual expense allowance factors by product (i.e. per policy expense factor, percentage of premium expense factor, and percentage of face expense factor), although it was requested.

The Company used the Formula to allocate expenses to annual statement lines of business. However, the Company did not use the Formula to allocate any expenses between

companies (i.e. the Company used general indexes such as in force policy counts and statutory policy reserves).

The Company violated Section 91.4(a)(2) of Department Regulation No. 33 by failing to provide records with sufficient detail to show fully the system and actual basis of allocation for expenses that were allocated between companies and by line of business. The Company also violated Section 91.4(f)(5) of Regulation No. 33 for using general indexes such as premiums, policy counts, and face amounts to allocate expenses.

In addition, the Company violated Section 91.4(a)(5) of Regulation No. 33 by failing to treat expense allocations in the same manner between companies and lines of business.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, surplus and other funds 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	\$438,571,634
Cash, cash equivalents and short term investments	7,389,891
Contract loans	5,937,631
Investment income due and accrued	7,810,547
Uncollected premiums and agents' balances in the course of collection	273,890
Deferred premiums, agents' balances and installments booked but deferred and not yet due	3,715,908
Amounts recoverable from reinsurers	247,348
Net deferred tax asset	655,654
Receivables from parent, subsidiaries and affiliates	1,639
Health care and other amounts receivable	76,543
Federal income taxes recoverable-parent	<u>626,286</u>
 Total admitted assets	 <u>\$465,306,971</u>

<u>Liabilities, Capital, Surplus and Other Funds</u>	
Aggregate reserve for life policies and contracts	\$366,472,191
Liability for deposit-type contracts	53,665,905
Life (contract claims)	6,058,807
Premiums and annuity considerations for life and accident and health contracts received in advance	13,260
Interest maintenance reserve	5,175,122
General expenses due or accrued	116,303
Taxes, licenses and fees due or accrued, excluding federal income taxes	82,379
Unearned investment income	194,717
Amounts withheld or retained by company as agent or trustee	35,008
Amounts held for agents' account	152,663
Remittances and items not allocated	671,595
Asset valuation reserve	1,796,757
Payable to parent, subsidiaries and affiliates	842,499
Unclaimed funds	188,777
Interest on suspense premiums	11,940
Other miscellaneous liabilities	<u>424,045</u>
 Total liabilities	 <u>\$435,901,968</u>
 Common capital stock	 \$ 2,000,000
Gross paid in and contributed surplus	24,100,000
Unassigned funds (surplus)	<u>3,305,003</u>
 Total common capital stock, preferred capital stock, and surplus	 <u>\$ 29,405,003</u>
 Total liabilities, common capital stock, and surplus	 <u>\$465,306,971</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Premiums and considerations	\$52,851,218	\$51,243,708	\$51,386,393
Investment income	23,480,101	25,796,825	27,562,461
Commissions and reserve adjustments on reinsurance ceded	2,267,619	1,962,709	3,894,801
Miscellaneous income	<u>15,476</u>	<u>0</u>	<u>199,110</u>
Total income	<u>\$78,614,414</u>	<u>\$79,003,242</u>	<u>\$83,042,765</u>
Benefit payments	\$31,427,024	\$46,895,565	\$32,863,107
Increase in reserves	36,421,625	20,317,859	37,106,306
Commissions	5,740,962	5,067,054	5,059,752
General expenses and taxes	8,521,494	8,882,434	10,142,160
Increase in loading on deferred and uncollected premium	328,093	(178,085)	340,550
Miscellaneous deductions	<u>0</u>	<u>661,568</u>	<u>0</u>
Total deductions	<u>\$82,439,198</u>	<u>\$81,646,395</u>	<u>\$85,511,875</u>
Net loss	\$ (3,824,784)	\$ (2,643,153)	\$(2, 469,110)
Federal and foreign income taxes incurred	<u>(121,877)</u>	<u>480,670</u>	<u>(348,652)</u>
Net loss from operations before net realized capital gains	\$ (3,702,907)	\$ (3,123,823)	\$(2,120,458)
Net realized capital gains	<u>166,388</u>	<u>1,078,898</u>	<u>426,144</u>
Net loss	<u>\$ (3,536,519)</u>	<u>\$ (2,044,925)</u>	<u>\$(1,694,314)</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Capital and surplus, December 31, prior year	<u>\$32,083,079</u>	<u>\$30,656,767</u>	<u>\$29,203,646</u>
Net income	\$ (3,536,519)	\$ (2,044,925)	\$ (1,694,314)
Change in net deferred income tax	(508,529)	462,149	303,034
Change in non-admitted assets and related items	52,441	(2,173,629)	(966,754)
Change in asset valuation reserve	(589,044)	(696,716)	(510,996)
Cumulative effect of changes in accounting principles	3,602,770	0	0
Surplus adjustments:			
Paid in	0	3,000,000	3,000,000
Prior year surplus adjustment	42,475	0	70,387
Universal life policyholder reserves conversion adjustment	<u>(489,906)</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus for the year	<u>\$(1,426,312)</u>	<u>\$(1,453,121)</u>	<u>\$ 201,357</u>
Capital and surplus, December 31, current year	<u>\$30,656,767</u>	<u>\$29,203,646</u>	<u>\$29,405,003</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 219.4(a) of Department Regulation No. 34-A states, in part:

“(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. The use of statistics, illustrations and statements which may be factually correct will not be acceptable if their impact misleads or deceives. The use of technical insurance terminology should be held to a minimum and be appropriate within the context of the advertisement . . .

(3) Whether an advertisement has the tendency or capacity to mislead or deceive shall be determined by the superintendent from the overall impression that the advertisement may be reasonably expected to create upon a person not knowledgeable in insurance matters.”

The Company's illustration software used to produce illustrations for New York applicants in connection with Company policy forms NYP2188 and NYP2189 produces an illustration that depicts an “automatic” accelerated death benefit option as a benefit under the proposed policy. The depicted accelerated death benefit rider is not approved for use in New York and is not part of the policy issued.

The Company violated Section 219.4(a)(1) of Department Regulation No. 34-A by disseminating an illustration to New York policyholders that is misleading because it depicts an accelerated death benefit rider benefit that is not available under policy forms NYP2188 and NYP2189 or approved for use in New York.

Section 219.4(p) of Department Regulation No. 34-A states, in part:

“ . . . An advertisement shall prominently describe the type of policy advertised. If a specific policy or policy series is being advertised, the form or series number or other appropriate description shall be shown. . . . ”

Five of the Company's advertisements referenced policy form numbers that are not approved for use in New York. The referenced policy forms were actually related to policies issued by the parent, ALIC, outside of New York.

The Company violated Section 219.4(p) of Department Regulation No. 34-A by disseminating advertisements in New York that referenced incorrect policy forms.

Section 219.4(m) of Department Regulation No. 34-A states:

“In the event an advertisement uses nonmedical, no medical examination required, or similar terms where issue is not guaranteed, such terms shall be accompanied, in each instance, by a disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy or payment of benefits may depend upon the answers given in the application and the truthfulness thereof.”

Five advertisements used the term “nonmedical” or “no medical examination required” to describe the Company's “Easy Issue” products offered through its financial institution markets. The Company's underwriting requirements for its “Easy Issue” products require that the prospective insured answer “no” to all medical underwriting questions on the application and have no significant medical history reported to the Medical Information Bureau (i.e. issuance of the policy is not guaranteed). However, the Company failed to disclose in these advertisements that issuance of the policy or payment of benefits may depend upon the answers given in the application and the truthfulness thereof as required by Section 219.4(m) of Department Regulation No. 34-A.

The Company violated Section 219.4(m) of Department Regulation No. 34-A by failing to disclose that issuance of the Company's “Easy Issue” products and the payment of benefits there under may depend upon the answers given in the application and the truthfulness thereof.

Section 219.5(a) of Department Regulation No. 34-A states:

“Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. In order to be complete, the file must contain all advertisements whether used by the company, its agents or solicitors or other persons. That portion of the advertising file which has been covered by a filed report on examination may be eliminated.”

A review of the Company’s advertisements and sales materials revealed that the Company did not maintain a complete advertising file. The examiner was unable to locate specimens for 30 advertising pieces listed on the Company’s advertising log. In addition, neither the advertising logs nor the Advertising Control Form maintained in the Company’s advertising file (for each individual advertisement) included a notation indicating the manner and extent of distribution for each individual advertisement.

The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain a complete advertising file containing a specimen copy of every printed, published or prepared advertisement, with a notation indicating the manner and extent of distribution.

Section 51.5 of Department Regulation No. 60 states, in part:

“Each agent and broker shall . . .

(c) Where a replacement has occurred or is likely to occur . . .

(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 . . .

(5) Submit with the application to the insurer replacing the life insurance policy or annuity contract: a list of all life insurance policies or annuity contracts proposed to be replaced; a copy 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;’ and the completed ‘Disclosure Statement,’ including the primary reason(s) 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.”

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:

(1) Require with or as part of each application a list prepared by the agent or broker representing, to the best of his or her knowledge, all of the existing life insurance policies and annuity contracts proposed to be replaced;

(2) Require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed 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’ and the completed ‘Disclosure Statement;’

(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’ . . .

(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;

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein . . .

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

Section 243.2(b) of Department Regulation No. 152 states, in part:

“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 . . . A policy record shall include . . .
- (iv) other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy . . .
- (8) Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review.”

The replacement data file that was initially provided to the examiners in response to examination request #10 contained replacement transactions for the parent, Aviva Life Insurance Company, which are not subject to Department Regulation No. 60. As a result, the examiner’s initial sample contained a number of replacement transactions written outside of New York by an agent not licensed in New York.

The examiner recommends that the Company implement procedures to ensure that the Company’s replacement transactions are segregated from the parent’s.

In 23 of 36 (63.9%) external replacement transactions reviewed and in 13 out of 24 (54.2%) internal replacement transactions reviewed, the examiner was able to determine that the Disclosure Statement was incomplete or contained inaccuracies for either the proposed policy and/or the existing policy(s) or contract(s). The deficiencies were not corrected within ten days of receipt of the application and the Company did not reject the application.

The Company violated Section 51.6(b)(7) Department Regulation No. 60 by accepting Disclosure Statements that were incomplete and/or contained inaccuracies for either the proposed policy/contract and/or the existing policy(s) or contract(s).

In 16 of the 36 (44.4%) external replacement transactions reviewed and in six of the 24 (25.0%) internal replacement transactions reviewed, a copy of the agent authorization form (Form NY 2060), which includes a list of all life insurance policies or annuity contracts proposed to be replaced, was not maintained in the policy record.

The Company violated Section 51.6(b)(1) of Department Regulation No. 60 and Section 243.2(b) of Department Regulation No. 152 by failing to maintain a list of all life insurance policies or annuity contracts proposed to be replaced as part of the policy record (i.e. the agent authorization form - Form NY 2060).

In ten of the 36 (27.8%) external replacement transactions reviewed and in nine of the 24 (37.5%) internal replacement transactions reviewed, the examiner was unable to locate the required replacement forms in the policy record. In 17 cases, the Important Notice was missing. There were also six instances where all or part of the Disclosure Statement was missing. In these instances, the missing documentation was not submitted within ten days of receipt of the application by the Company and the Company did not reject the applications.

The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application: 1) proof of receipt by the applicant of the Important Notice; and/or 2) the completed Disclosure Statement.

The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application in situations where the Important Notice and/or Disclosure Statement forms were not received with the application.

In four of 36 (11.1%) external replacement transactions reviewed and in seven of the 24 (29.2%) internal replacement transactions reviewed, the application, Disclosure Statement and/or authorization form were signed on the same day. In three of these cases, (2 internal and 1 external), the agent indicated on the Disclosure Statement that approximations were used. The agent could not have possibly satisfied the mandatory waiting period (i.e., 20 days) to allow the existing insurer to respond to the request for information to complete the Disclosure Statement. In the remaining eight cases, while the agent indicated on the Disclosure Statement that the information contained therein was provided by the existing insurer for the replaced policy or contract, the agent failed to submit the dated material with the application. Therefore, the examiner and the Company were unable to verify whether or not the agent satisfied the mandatory waiting period before taking the application. However, given that the authorizations were signed on the same day as the Disclosure Statement, it is highly doubtful that the agent could have received any information from the replaced insurers in the cases involving external replacements.

In 25 out of 36 (69.4%) external replacement transactions reviewed and in 21 out of 24 (87.5%) internal replacement transactions reviewed, a copy of the information obtained from the existing insurer(s) necessary to complete the Disclosure Statement was not maintained in the policy record. The examiner was unable to determine the accuracy and completeness of the information for the existing policy contained in the Disclosure Statement. Without a copy of the

information provided by the existing insurer, it is impossible for the Company to determine the accuracy and completeness of the information reported on the Disclosure Statement for the existing policy(s) or contract(s).

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that Disclosure Statements completed by its agents and submitted with applications during the examination period were accurate and complete.

The examiner recommends that the Company implement procedures to ensure that Disclosure Statements are complete and accurate and provided to applicants on or before the date that the application is taken and that if such is not the case, that the Company immediately reject the application and so notify both the agent and the applicant indicating the reasons for the rejection in order to comply with the requirements of Department Regulation No. 60.

In ten of the 36 (27.8%) external replacement transactions reviewed, the Company failed to furnish the existing insurer(s) with a copy of the sales material and the completed Disclosure Statement used in the sale within ten days of receipt of the application.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to provide the existing insurer a copy of the sales material used in the sale of the proposed life insurance policy or annuity contract and the completed Disclosure Statement within ten days of receipt of the application.

As a result of the aforementioned examination findings involving violations of Department Regulation No. 60, the Company performed a review of all external and internal replacement transactions made from January 1, 2002 through December 31, 2005. The review focused on compliance with Department Regulation No. 60 and the identification of policyholders that may have been adversely affected by the Company's lack of providing timely, complete and accurate disclosure during the sales process.

The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted above and provide relief to all policy and contract holders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts.

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

should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee.

B. Underwriting and Policy Forms

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

Section 3209 of the New York Insurance Laws states, in part:

“ . . . (b)No policy of life insurance shall be delivered or issued for delivery in this state . . . unless the prospective purchaser has been provided with the following:

(1) a copy of the most recent buyer's guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken . . .

(d) The preliminary information shall be in writing and include, to the extent applicable, the following:

(1) the name and address of the insurance agent or broker or, if no agent or broker is involved, a statement of the procedure to be followed in order to receive responses to inquiries concerning the preliminary information;

(2) the full name and home office, administrative office or branch or agency office address of the company in whose name the life insurance policy is to be written . . . ”

Section 53-2.1(a) of Department Regulation No. 74 states, in part:

“The preliminary information shall be in writing and include, to the extent applicable, the following:

(1) the name and address of the insurance agent or broker, or if no agent or broker is involved, a statement of the procedure to be followed to receive responses to inquiries concerning the preliminary information;

(2) the full name and home office, administrative office or branch or agency office address of the insurer in whose name the life insurance policy is to be written;

(3) the date of the preliminary information and the generic name of the policy, the initial amount of insurance and the initial annual premium for the base policy and each rider, if applicable . . . ”

The Company failed to provide preliminary information in writing at or prior to the point of sale for seven policy forms (NYP916, NYP 2061, NYP1041, NYP2071, NYP2116, NYP2117 and NYP2185) contained in the annual certification that were identified as not marketed with an illustration during the examination period.

The Company also did not provide preliminary information for its wealth transfer policy (NYP2185), which offers both guaranteed and non guaranteed features but is not sold with an illustration. The Company stated that it requires customers to sign a Certificate of Disclosure at the time of application for its wealth transfer policy (NYP2185). The Company contends that the Certificate of Disclosure contains some, but not all, of the information required by Section 53-2.1 of Department Regulation No. 74. However, the examiner's review of a specimen Certificate of Disclosure revealed that it cannot be substituted for the preliminary information since it contains only one of the disclosures required under Section 3209(d)(2) of the New York Insurance Law, the Company's home office address.

The Company violated Section 3209(b)(1) of the New York Insurance Law by failing to provide prospective applicants written preliminary information required by Section 3209 of the New York Insurance Law and Section 53-2.1 of Department Regulation No. 74 at or prior to the time an application is taken.

Section 3209(g) of the New York Insurance Law states:

“Every insurer shall maintain, at its home office or principal office, a complete file containing one copy of each policy summary form authorized by the insurer for use pursuant to this section.”

Section 53-1.4(a) of Department Regulation No. 74 states, in part:

“In addition to the requirements imposed by Section 53-3.5(e) of Subpart 53-3, each insurer shall maintain at its home or principal office, a complete file containing one specimen copy each of the preliminary information form, policy summary form, and sales illustrations authorized by the insurer for each policy form subject to this Part. Such files shall be subject to regular and periodic inspection by the Department. All such forms shall be maintained in said file for a period of either six years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time . . . ”

A physical inspection of the records revealed that the Company did not maintain for each policy form, a complete file containing one specimen copy of the preliminary information form, policy summary form, and sales illustration authorized by the insurer at its home office.

The Company violated Section 3209(g) of the New York Insurance Law and Section 53-1.4(a) of Department Regulation No. 74 by failing to maintain a complete compliance file at its

home office for each policy form, containing one specimen copy of the preliminary information form and the policy summary form authorized by the insurer.

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 3211 of the New York Insurance Law states, in part:

“(a)(1) No policy of life insurance . . . shall terminate or lapse by reason of default in payment of any premium, installment, or interest on any policy loan in less than one year after such default, unless 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. A separate notice shall not be required for insurance that is supplemental to a policy of life insurance . . .

(b) 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. . . .”

The examiner’s review of the premium notices generated from the Life 70 and Vantage policy administration systems revealed that these notices failed to contain a statement indicating 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(b)(2) of the New York Insurance Law by disseminating premium notices that failed to contain the required language pertaining to policy termination or lapse when the premium is not paid on or before the due date shown or within the specified grace period of the policy.

Section 53–3.6(a) of Department Regulation No. 74 states, in part:

“In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policyowner with an annual report on the status of the policy that shall contain at least the following information:

(1) For policies subject to Section 4232(b) of the Insurance Law, the report shall include the following:

(i) the beginning and end date of the current report period;
 (ii) the policy value at the end of the previous report period and at the end of the current report period . . .

(2) For all other policies, where applicable:

(i) current death benefit;
 (ii) annual contract premium;
 (iii) current cash surrender value;
 (iv) current dividend;
 (v) application of current dividend; and
 (vi) amount of outstanding loan. . . .”

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

“In the case of life insurance policies to which this section is applicable and which contain a cash surrender value, the insurer must provide an annual notification that the policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner. Such notification shall include a statement that the insured has the right to request an updated policy illustration based . . . in respect to a policy subject to subsection (a) of section four thousand two hundred thirty-two of this chapter, on the then current mortality, interest and expense assumptions. The notification pertaining to the cash surrender value shall be set out in a conspicuous manner and shall include the address to which the policyowner may make a written inquiry. Any notice or statement which informs a policyowner of the policy's cash surrender value at least annually shall be deemed to comply with the requirements of this subsection.”

The Company acknowledged in writing that it failed to provide annual reports or cash surrender value notices to certain policyholders since 2001. The Company further stated that it has taken immediate corrective action to comply with Section 53-3.6 of Department Regulation No. 74 and Section 3211(g) of the New York Insurance Law and anticipates that it will be able to provide annual reports and cash surrender value notices to the affected policyholders by March 31, 2006.

The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(a) of Department Regulation No. 74 by failing to provide annual reports or cash surrender value notices to policyholders.

Section 4221(a) of the New York Insurance Law states, in part:

“In the case of policies issued on or after the operative date of this section as defined in subsection (p) hereof, no policy of life insurance, except as stated in subsection (o) hereof, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions . . .

(7) That the company shall . . . mail to each such holder at least once every policy year or within sixty days after the end of a policy year a statement as of a date during such year as to the death benefit, cash surrender value and loan value under the policy . . .”

A review of specimen disclosure documents (annual reports required under Department Regulation No. 74 and cash surrender value notices provided under Section 3211(g) of the New York Insurance Law) revealed that the notices mailed to universal life policyholders during the examination period did not specify the loan value under the policy.

The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to provide a statement containing the loan value under the policy at least annually to universal life policyholders.

7. AGENCY OPERATIONS

Section 2112(a) of the New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall file a certificate of appointment in such form as the superintendent may prescribe in order to appoint insurance agents to represent such insurer . . .”

Section 2112(d) of the New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment as set forth in subsection (a) of this section of any insurance agent licensed in this state, or upon termination for cause for activities as set forth in subsection (a) of section two thousand one hundred ten of this article, of the certificate of appointment, of employment, of a contract or other insurance business relationship with any insurance producer, file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause. . . .”

A review revealed that 34 of 45 agents were not appointed at the time the agents wrote business on behalf of the Company.

The Company violated Section 2112(a) of the New York Insurance Law by failing to appoint agents that wrote business on its behalf during the examination period.

The Company provided a listing of all agents whose certificates of appointment had been terminated during the examination period. A review of the agent termination listing provided by the Company revealed that a total of 456 were still active as per the Department files. The Company terminated 456 agents without filing a statement of the facts relative to, and the cause of, the termination with the Department.

The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent upon termination of the certificate of appointment for approximately 456 of its agents.

8. DISASTER RECOVERY AND BUSINESS CONTINUITY PLANS

The objective of a disaster recovery plan is to provide reasonable assurance that data, systems and operations can be successfully recovered and be available to users in the event of a disaster. The objective of a business continuity plan is to reasonably ensure that the recovery of critical business processes could take place in the event of a disaster.

The Company's Disaster Recovery Plan ("DRP") does not reflect the implementation, and does not provide for the restoration, of certain significant systems. The Company is in the process of reviewing their DRP in detail in conjunction with an internal review. The Company anticipates completion of this process by June 30, 2006.

The examiner recommends that the Company continue to develop a comprehensive disaster recovery plan that is tested on a regular basis. Such a plan should address hardware and system recovery, data retrieval procedures, emergency contact information, hardware/software vendor information, telecommunications recovery procedures, disaster declaration approval procedures, and physical recovery location. The plan should contain provisions to ensure periodical testing. The disaster recovery plan should be aligned with the business continuity plan, approved, and periodically reviewed by management to ensure that it meets the needs of the business and reflects implementations of new application software and systems. Documentation of the disaster recovery test plan and results (indicating problems found or successful completions) and documentation of management approval of the plan should be maintained.

Testing of the Company's Business Continuity Plan ("BCP") has been limited to incident management response. The BCP has not been tested in conjunction with the activation or use of the Company's designated alternate hot site since October 2003. Business users have not been integrated with BCP testing exercises at all to date. Sungard, the Company's disaster recovery facilities and hardware service provider, postponed testing scheduled for 2005 due to their responsibilities in relation to the disaster response to hurricanes Katrina and Rita.

The examiner also recommends that the Company continue its business continuity planning efforts by developing a formal, written business continuity plan that is tested on a regular basis. Such a plan should identify the recovery of critical business processes. The plan should also identify supporting systems applications, vendors that would assist with locating

alternate processing and office site locations, forms and documentation arrangements, network and application restoration procedures, and procedures to be followed by Company personnel during the disaster and recovery period. The plan should contain provisions to ensure periodical testing and business units should be involved in testing exercises. The business continuity plan should be approved and periodically reviewed by management to ensure that it meets the needs of the business. Documentation of the business continuity test plan and results and documentation of management approval of the plan should be maintained.

9. AGENT'S COMPENSATION

Section 4228 of the New York Insurance Law states, in part:

“ . . . (d) A company may pay agents and brokers as it sees fit for the sale and service of policies and contracts. However . . .

(5) With respect to premiums and considerations recorded within a period of twelve consecutive months on business written by any agent or broker, no company shall pay or permit to be paid to an agent or broker expense allowance greater than the excess, if any, of . . .

(D) ninety-nine percent of all qualifying first year premiums . . .

(f)(1) Filing requirements for agent and broker compensation plans are as follows . . .

(5) Any company making one or more payments that exceed any limit in subsection (d) of this section that is unable to recover such excess payments shall notify the superintendent within thirty days of the date that it learns or realizes that it exceeded the limit; however, if the company recovers such excess payments prior to the required notification date, it need not make such notification. At that time, the company shall report the reason the company exceeded the limit, the number of agents and brokers to whom payments in excess of the limit were made, and the amount of money paid in excess of the limit, and shall describe the actions the company will take promptly to prevent any further instances of it exceeding this limit. . . .”

During the prior examination it was determined that the Company did not file its existing compensation plans as required under the revisions of Section 4228 of the New York Insurance Law on or before February 28, 1999. Pursuant to the 2001 examination findings, the Company took action by developing, filing, and implementing compensation plans in order to comply with Section 4228 of the New York Insurance Law. The new compensation plans were filed and placed into effect on January 1, 2003.

In the case of traditional life plans, the Company paid compensation to HSBC at a rate of 105% through April 12, 2004. These payments exceeded the limits allowed under Section 4228(d)(5) of the New York Insurance Law.

The Company violated Section 4228(d)(5)(D) of the New York Insurance Law by paying total compensation on premiums and considerations recorded within a period of twelve consecutive months on business written under the supervision of any general agent, on business not personally produced by such general agent, greater than ninety-nine percent of all qualifying first year premiums.

The Company violated Section 4228(f)(5) of the New York Insurance Law by failing to notify the Superintendent that it made one or more payments exceeding the limits in subsection (d) and by failing to report certain information pertaining to the excess compensation paid to HSBC.

The examiner recommends that the Company take immediate action to comply with Section 4228(f)(5) of the New York Insurance Law by making the prescribed notification to the Superintendent regarding payments made to any agent that exceeded the limits allowed under Section 4228(d) of the New York Insurance Law during the examination period.

10. RECORD RETENTION PLAN

Section 243.2 of the Department Regulation No. 152 states, in part:

“ . . . (b) 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 . . .

(4) A claim file for six calendar years after all elements of the claim are resolved and the file is closed or until after the filing of the report on examination in which the claim file was subject to review, whichever is longer. A claim file shall show clearly the inception, handling and disposition of the claim, including the dates that forms and other documents were received.

(5) A licensing record for six calendar years after the relationship is terminated for each Insurance Law licensee with which the insurer establishes a relationship. Licensing records shall be maintained so as to show clearly the dates of appointment and termination of each licensee . . .

(e) The records shall be readily available and easily accessible to the superintendent . . . ”

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

“(c) 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. . . . ”

A review of the Company’s response to item 14 of the pre-examination letter, which requested an inventory of records maintained on electronic media and the Company’s retention schedule, revealed that the Company does not adequately address the minimum record keeping requirements regarding the origin, maintenance and reproduction of information required by Department Regulation No. 152.

The current plan fails to contain an index of the current records being maintained, including information relating to the method of retention (i.e. media type) for each type of record maintained as well as the safeguards established to prevent alteration of such records.

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

The examiner requested a sample of policy records (application, claim, and policyholder benefit) files for review. The Company was unable to provide some of the requested files. The Company explained that it had difficulties retrieving some of the selected policyholder related records from their storage location at Iron Mountain due to documentation errors.

- 1) The Company was unable to provide 2 out of 27 (7.41%) denied and resisted claim files requested.
- 2) The Company was unable to provide 10 out of 69 (14.49%) underwriting files requested.
- 3) The Company was unable to provide 3 out of 51 (5.88%) paid life and annuity claim files requested.
- 4) The Company was unable to provide 5 out of 48 (10.42%) surrender life and annuity contract files requested.
- 5) The Company was unable to provide 1 out of 25 (4.0%) contract loans files requested.
- 6) The Company was unable to provide 2 out of 59 (3.39%) lapse transaction resisted claim files requested.
- 7) The Company was unable to provide 3 out of 31 (9.68%) reserve policy files requested.

The Company violated Section 243.2(e) of Department Regulation No. 152 by failing to maintain its policy records in a manner that allows ready and easy access.

In addition, the examiner requested the appointment and termination documentation for 35 agents who wrote business during the examination period. The Company stated that it appointed the producers using the Department's on-line Appointment/Termination Application System. However the Company does not maintain the on-line confirmations received from the Department. The Company further stated that it was only able to provide internally generated applications for appointment or termination.

The Company violated Section 243.2(b)(5) of Department Regulation No. 152 by failing to maintain licensing records that show clearly the dates of appointment and termination of each licensee.

11. POLICY ADMINISTRATION AND SYSTEM CONTROLS

There were several policies included on the Company's reserve, policy loan, and in force data files where the total loan value exceeded the statutory reserve on the policy as per the reserve data filed with the Department's Valuation Bureau. The Company's policy administration system, Life 70, is unable to administer a certain block of universal life policies properly and the system automatically suspends the policies. Once policies are in suspended status, no policy processing can occur and the policy must be reviewed and administered manually to correct the loan and cash values of the policy. This policy administration problem and manual work around process was identified and addressed with the Company during the last examination. The Company informed the examiner during the prior examination that they would take the following corrective action:

“CGU Life Insurance Company of New York (former name of the Company) is aware of the problem . . . Our current system has been unable to administer the policies correctly and has placed them on a suspended status. Once suspended, the policy is reviewed and administered manually to correct the loan and cash values. The potential number of policies that could be affected is limited and the Company has stopped selling the product in New York. CGU retained the services of a software computer company in this respect and is now in the process of resolving the problem internally through our Actuarial Department.”

The examiner acknowledges that the excess of the policy loan value over the statutory reserve may not be material and that the number of affected policyholders may be limited. However, the fact that the Company has known about the policy administration errors for a significant period time and further that these errors were identified during the prior examination period and despite the Company's written assurances to the examiner in 2002, the Company has failed to follow through with the corrective action it agreed to take. This situation may be an indication that there is a lack of management oversight or a breakdown in internal controls that needs to be addressed and resolved in a timely manner.

The examiner recommends that the Company take immediate action to resolve the known system errors so that the proper policy status and related assets and liabilities are reflected on the Company's policy administration, valuation (in-force), and general ledger systems.

12. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 1505(b) of the New York Insurance Law by not maintaining its books, accounts and records in such a manner as to clearly disclose the nature of the transactions.</p> <p>A physical inspection at the Company's home office in Buffalo, NY indicated that the Company maintains its books, accounts and records in such a manner as to clearly disclose the nature of the transactions.</p>
B	<p>The Company violated Section 1505(d)(3) of the New York Insurance Law by failing to comply with its filed service agreement by not making payments within 90 days of the fiscal year end.</p> <p>A review of service agreement transactions revealed that payments were made within 90 days of the fiscal year end.</p>
C	<p>The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain its advertising file in its home office.</p> <p>The examiner's review indicated that the Company maintained a file in its home office; however the file was incomplete (see Section 6A).</p>
D	<p>The Company violated Section 2122(a)(2) of the New York Insurance Law by calling attention to an unauthorized insurer in its advertisements.</p> <p>The Company has removed references to unauthorized insurers from its advertisements.</p>

<u>Item</u>	<u>Description</u>
E	<p>The Company violated Section 51.6(b)(5) of Department Regulation No. 60 by not submitting to the Superintendent, a list of insurers who failed to provide information in accordance with Section 51.6(c)(2) of the Regulation.</p> <p>The Company has established a procedure to identify insurers that fail to provide information in accordance with Section 51.6(c)(2) of Department Regulation No. 60. As part of that procedure, quarterly reports are filed with the Department.</p>
F	<p>The Company violated Section 325(a) of the New York Insurance Law by failing to maintain its charter, by-laws and books of account at its principal office in this state.</p> <p>A physical inspection of the records maintained at the home office indicated that the Company again violated Section 325(a) of the New York Insurance Law by failing to maintain the minutes of the meetings of the board of directors held in February and May of 2005 in Buffalo, New York.</p>
G	<p>The Company violated Section 420.13(a)(1)(ii) of Department Regulation No. 169, by sharing nonpublic personal financial information with a nonaffiliated third party without a contractual agreement that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information.</p> <p>The Company has implemented a vendor due diligence procedure.</p>
H	<p>The examiner recommends that the Company enter into a contractual agreement with third party administrators that prohibits the third party administrators from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, as required by Department Regulation No. 169.</p> <p>A review of the third party administrator agreements revealed that the agreements prohibit the third party administrators from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, as required by Department Regulation No. 169.</p>

<u>Item</u>	<u>Description</u>
I	<p>The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by not filing its agent compensation plans with the Superintendent.</p> <p>The Company's agent compensation plan was filed with the Department and placed into effect on January 1, 2003. In addition, the Company filed a number of different plans for other product types and distribution channels during the examination period.</p>
J	<p>The Company violated Section 4228(e)(9)(B) of the New York Insurance Law by issuing a loan to an agent exceeding the expected compensation of the agent over the next 12 months.</p> <p>The Company has not made loans to any of its agents since the date of the referenced loan (which has since been paid off).</p>
K	<p>The Company violated Section 4228(e)(9)(C) of the New York Insurance Law by failing to secure adequate collateral for an agent loan as required by Law.</p> <p>The Company does not have any outstanding loans to agents and has not made loans to any of its agents since the date of the referenced loan.</p>

13. 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 the Company revise its tax allocation agreement to comply with the guidelines in Department Circular Letter No. 33(1979) and that the Company notify the Department within 30 days of such revision.	7
B	The examiner recommends that the Company notify the Superintendent prior to any surplus contributions by the parent in the future.	8
C	The Company violated Section 325(a) of the New York Insurance Law by failing to maintain the minutes of the board of directors meetings held in February and May of 2005 at its home office in Buffalo, New York.	10
D	The Company violated Section 4211(a) of the New York Insurance Law by failing to file a copy of the notice of election with the Superintendent at least ten days before the day of such election.	10 – 11
E	The Company violated Section 4211(b) of the New York Insurance Law by failing to file a written notice of the election of directors with the Superintendent at least ten days prior to such successors taking office and exercising their duties.	10 – 11
F	The Company is reminded of its responsibility under Section 216.4(c) of Department Regulation No. 64 to ensure that a Consumer Services Officer is designated with the Department at all times.	11 – 12
G	The Company violated Section 127.3(a) of the Department Regulation No. 102 by taking reserve credits under treaties that were not duly executed by both parties no later than the ‘as of date’ of the financial statement in which credit(s) was taken.	13 – 14
H	The examiner recommends that the Company enter into a written reinsurance contract with ReliaStar.	14
I	The Company violated Section 91.5(b) of Department Regulation No. 33 by using a segmentation method to allocate net investment income to annual statement lines of business without filing the method with the Department prior to its use.	17

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
J	The Company violated Section 91.4(a)(2) of Department Regulation No. 33 by failing to provide records with sufficient detail to show fully the system and actual basis of allocation for expenses that were allocated between companies and by line of business based upon the Formula that was derived from certain pricing assumptions and appears to resemble weighted general indexes such as premiums, policy counts, and face amounts.	17 – 19
K	The Company violated Section 91.4(f)(5) of Department Regulation No. 33 for using general indexes such as premiums, policy counts, and face amounts to allocate expenses.	17 – 19
L	The Company violated Section 91.4(a)(5) of Department Regulation No. 33 by failing to treat expense allocations in the same manner between companies and lines of business.	17 – 19
M	The Company violated Section 219.4(a)(1) of Department Regulation No. 34-A by disseminating an illustration to New York policyholders that is misleading because it depicts an accelerated death benefit rider benefit that is not available under policy forms NYP2188 and NYP2189 or approved for use in New York.	24
N	The Company violated Section 219.4(p) of Department Regulation No. 34-A by disseminating advertisements in New York that referenced incorrect policy forms.	25
O	The Company violated Section 219.4(m) of Department Regulation No. 34-A by failing to disclose that issuance of the Company's "Easy Issue" products and the payment of benefits there under may depend upon the answers given in the application and the truthfulness thereof.	25
P	The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain a complete advertising file containing a specimen copy of every printed, published or prepared advertisement with a notation indicating the manner and extent of distribution.	26
Q	The examiner recommends that the Company implement procedures to ensure that the Company's replacement transactions are segregated from the parent's.	28

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
R	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by accepting Disclosure Statements that were incomplete and/or contained inaccuracies for either the proposed policy/contract and/or the existing policy(s) or contract(s).	28
S	The Company violated Section 51.6(b)(1) of Department Regulation No. 60 and Section 243.2(b) of Department Regulation No. 152 by failing to maintain a list of all life insurance policies or annuity contracts proposed to be replaced as part of the policy record (i.e. the agent authorization form - Form NY 2060).	28
T	The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application: 1) proof of receipt by the applicant of the Important Notice; and/or 2) the completed Disclosure Statement.	29
U	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application in situations where the Important Notice and/or Disclosure Statement forms were not received with the application.	29
V	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that Disclosure Statements completed by its agents and submitted with applications during the examination period were accurate and complete.	29 – 30
W	The examiner recommends that the Company implement procedures to ensure that Disclosure Statements are complete and accurate and provided to applicants on or before the date that the application is taken and that if such is not the case, that the Company immediately reject the application and so notify both the agent and the applicant indicating the reasons for the rejection in order to comply with the requirements of Department Regulation No. 60.	30
X	The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to provide the existing insurer a copy of the sales material used in the sale of the proposed life insurance policy or annuity contract and the completed Disclosure Statement within ten days of receipt of the application.	30

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
Y	The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted above and provide relief to all policy and contract holders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts.	30
Z	The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee.	30 – 31
AA	The Company violated Section 3209(b)(1) of the New York Insurance Law by failing to provide prospective applicants written preliminary information required by Section 3209 of the New York Insurance Law and Section 53-2.1 of Department Regulation No. 74 at or prior to the time an application is taken.	31 - 32
AB	The Company violated Section 3209(g) of the New York Insurance Law and Section 53-1.4(a) of Department Regulation No. 74 by failing to maintain a complete compliance file at its home office for each policy form, containing one specimen copy of the preliminary information form and the policy summary form authorized by the insurer.	32 – 33
AC	The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating premium notices that failed to contain required language pertaining to policy termination or lapse when the premium is not paid on or before the due date shown or within the specified grace period of the policy.	33
AD	The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(a) of Department Regulation No. 74 by failing to provide annual reports or cash surrender value notices to policyholders.	34 – 35
AE	The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to provide a statement containing the loan value under the policy at least annually to universal life policyholders.	35
AF	The Company violated Section 2112(a) of the New York Insurance Law by failing to appoint agents that wrote business on its behalf during the examination period.	36

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
AG	The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent upon termination of the certificate of appointment for approximately 456 of its agents.	36
AH	The examiner recommends that the Company continue to develop a comprehensive disaster recovery plan that is tested on a regular basis.	37
AI	The examiner recommends that the Company continue its business continuity planning efforts by developing a formal, written business continuity plan that is tested on a regular basis.	37
AJ	The Company violated Section 4228(d)(5)(D) of the New York Insurance Law by paying total compensation on premiums and considerations recorded within a period of twelve consecutive months on business written under the supervision of any general agent, on business not personally produced by such agent, greater than ninety-nine percent of all qualifying first year premiums.	39
AK	The Company violated Section 4228(f)(5) of the New York Insurance Law by failing to notify the Superintendent that it made one or more payments exceeding the limits in subsection (d) and by failing to report certain information pertaining to the excess compensation paid to HSBC.	40
AL	The examiner recommends that the Company take immediate action to comply with Section 4228(f)(5) of the New York Insurance Law by making the prescribed notification to the Superintendent regarding payments made to any agent that exceeded the limits allowed under Section 4228(d) of the New York Insurance Law during the examination period.	40
AM	The examiner recommends that the Company revise its records retention plan in order to comply with Department Regulation No. 152.	41
AN	The Company violated Section 243.2(e) of Department Regulation No. 152 by failing to maintain its policy records in a manner that allows ready and easy access.	42
AO	The Company violated Section 243.2(b)(5) of Department Regulation No. 152 by failing to maintain licensing records that show clearly the dates of appointment and termination of each licensee.	42

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
AP	The examiner recommends that the Company take immediate action to resolve the known system errors so that the proper policy status and related assets and liabilities are reflected on the Company's policy administration, valuation (in-force), and general ledger systems.	43

APPOINTMENT NO. 22411

STATE OF NEW YORK
INSURANCE DEPARTMENT

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

EDMUND TAGOE

as a proper person to examine into the affairs of the

AVIVA 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 9th day of September, 2005

HOWARD MILLS

Superintendent of Insurance



Superintendent

