

STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF THE
AMERICAN LIFE INSURANCE COMPANY OF NEW YORK
AS OF
DECEMBER 31, 2001

DATE OF REPORT:

JULY 1, 2002

EXAMINER:

ANTHONY CHIAREL

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

July 1, 2002

Honorable Gregory V. Serio
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 21820, dated January 25, 2002 and annexed hereto, an examination has been made into the condition and affairs of the American Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 435 Hudson Street, New York, New York 10014.

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 Company was acquired by Inviva, Inc. from Mutual of America Life Insurance Company (“MOA”) on March 16, 2001, as part of an acquisition and sale of the Company’s parent, LIFCO Holding Company, Inc (“LIFCO”). LIFCO, formerly Mutual of America Corporation, was previously owned by MOA. Since its acquisition, the Company has concentrated on offering individual term insurance and variable annuities to the general public through the internet. (See item 3D of this report)

As of January 2000, MOA assumed (via an assumption reinsurance agreement and related transactions approved by the Department) a substantial portion of the Company’s group and individual business. This transaction resulted in the transfer of approximately \$644 million in general and separate account assets and reserves from the Company to MOA during the period January 1, 2000 through January 31, 2001. (See item 3E of this report)

As of March 11, 2002, the Company ceased issuing policies and contracts in New York State. (See item 3D of this report)

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, 2001 filed annual statement. (See item 5 of this report)

The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing application forms and policy forms in New York State that had not been filed with and approved by the Superintendent. (See item 6B of this report)

The Company violated Section 3201(b)(2) of the New York Insurance Law by issuing application forms and policy forms that had not been filed with the Superintendent for use outside of New York State. (See item 6B of this report)

The Company violated Section 219.4(p) of Department Regulation No. 34-A by using advertisements that are misleading as to the true identity of the insurer. (See item 6A of this report)

The Company’s requirement for policyholders to continue all policy maintenance electronically or surrender their policy is contrary to Department Circular Letter No. 33 (1999) with respect to the Electronic Signatures and Records Act as part of the State Technology Law. (See item 6B3 of this report)

The Company violated Sections 421.2 and 421.3 of Department Regulation No. 173 by transferring the responsibility of safeguarding and protecting against the unauthorized use of information that could cause harm to the consumer and or policyholder. (See item 6B3 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1996. This examination covers the period from January 1, 1997 through December 31, 2001. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2001 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, 2001 to determine whether the Company's 2001 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

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

The examiner reviewed the corrective actions taken by the Company with respect to violations and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 8 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 on March 23, 1955, under the laws of New York State as a stock life insurer and was licensed on November 9, 1956. The Company commenced business on April 1, 1957 and was initially formed as a wholly owned subsidiary of American Surety Company of New York. On December 31, 1963, control of the Company passed to Transamerica Insurance Company after American Surety Company of New York was absorbed in a merger. On April 1, 1981, Allied Investment Corporation, a corporation organized under the laws of the State of Delaware, acquired all of the outstanding stock of the Company from Transamerica Insurance Company. The Company was purchased on March 4, 1988 by Mutual of America Corporation. The name of Mutual of America Corporation was changed to LIFCO Holding Company, Inc., on September 20, 2000.

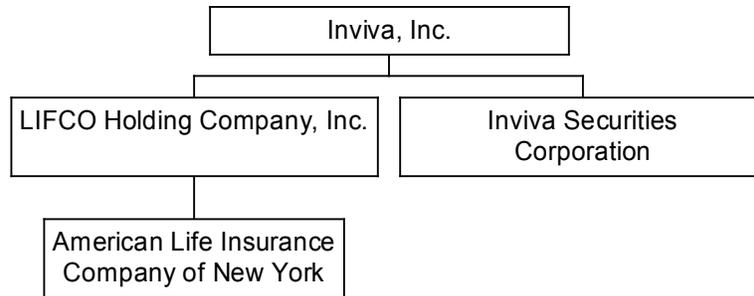
On March 16, 2001, Inviva, Inc. (“Inviva”), a newly formed holding company organized as a Delaware corporation in July 2000, acquired 100% of the outstanding stock of LIFCO from MOA for \$58.6 million. As a result of the Tax Payer Relief Act of 1997, which took effect on January 1, 1998, MOA lost its tax-exempt status and made the decision to sell the Company. Having the Company, a taxable entity, in its holding company system selling similar products was redundant.

LIFCO owns 100% of the issued and outstanding stock of the Company. The Company has 1,100,000 shares of common stock authorized, with a par value of \$4.55 per share, of which 550,000 are issued and outstanding.

B. Holding Company

The Company is a wholly owned subsidiary of LIFCO, a Delaware holding company. LIFCO is in turn a wholly owned subsidiary of Inviva, also a Delaware holding company and the Company’s ultimate parent. Inviva Securities Corporation (“ISC”), formerly the Concorde Investment Group, was acquired by Inviva on October 17, 2001. ISC is a Delaware corporation registered as a broker-dealer with the Securities and Exchange Commission and is a member of the National Association of Securities Dealers, Inc.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2001 follows:



The Company had two service agreements in effect as of December 31, 2001. One service agreement is with Inviva and covers certain general and administrative services, and one service agreement is with ISC, to serve as principal underwriter for variable annuities issued by the Company.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 21 directors. If the Company's admitted assets should exceed \$1.5 billion during any calendar year, then the number of directors shall increase to not less than 13 within one year following the end of such calendar year. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 31, 2001, the board of directors consisted of nine members. Meetings of the board are held immediately following the annual meeting of the shareholders in May of each year, and as frequently as deemed necessary, but at least once in each calendar year.

The nine board members and their principal business affiliation, as of December 31, 2001, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Peter B. Bach* Brooklyn, NY	Clinical Assistant Memorial Sloane-Kettering Cancer Center	2001
Philip Galanes* New York, NY	Chief Administrative Officer Golden Books Family Entertainment	2001
Laurence P. Greenburg* Washington, D.C.	Principal The Oysterhouse Group, LC	2001
Tracey Hecht New York, NY	Co-Chairman American Life Insurance Company of New York Co-Chairman Inviva, Inc.	2001
Robert B. Jefferson Medford, NJ	Chief Financial Officer ACE Group	2001
Dean C. Kehler New York, NY	Managing Director CIBC World Markets	2001
Thomas W. Leaton* Vienna, VA	Director of Finance-Global Operations Accenture	2001
David A. Smilow New York, NY	Co-Chairman and Chief Executive Officer American Life Insurance Company of New York Co-Chairman and Chief Executive Officer Inviva, Inc.	2001
Timothy J. Ward Hofheim, Germany	Executive board member Gerling Konzern Life Company	2001

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

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.

The following is a listing of the principal officers of the Company as of December 31, 2001:

<u>Name</u>	<u>Title</u>
David A. Smilow	Co-Chairman of the Board and Chief Executive Officer
William V. Nutting	President
Mark E. Singleton	Chief Financial Officer
John R. McGeeney	General Counsel
Todd Solash	Director of Marketing and Sales
Tom McWilliams	Chief Underwriter
Craig T. Shigeno	Chief Actuary
Martin W. Catron	Controller
Craig A. Hawley	Secretary
Mary Kaczmarek	Chief Sales Officer
Christopher Tosney*	Director of Administration
John Smith	Director of Information Technology

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

On May 3, 2002 John R. McGeeney resigned as General Counsel and was replaced by Craig Hawley, who is presently both General Counsel and Secretary. On May 17, 2002, Shane Gleeson replaced William V. Nutting as President, Tom McWilliams resigned as Chief Underwriter and was replaced by Martha Reesor, and Mary Kaczmarek's title was changed from Chief Sales Officer to Director of Sales. On May 22, 2002, Craig T. Shigeno, Chief Actuary, was replaced by Greg Goulding.

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 all 50 states, and the District of Columbia. In 2001, 49% of life premiums were received from New York, 10% were received from New Jersey, and approximately 5% were received from each of Florida and Virginia. In 2001, 87% of the annuity considerations were received from Connecticut and 7% were received from New York. The majority of 2001 accident and health premiums were received from

Georgia (56%), California (15%) and New York (10%). Policies are written on a non-participating basis.

The Company's agency operations are conducted on a general agency basis. Since the acquisition by Inviva on March 16, 2001, the Company has been under new management and has only issued individual term life insurance and variable annuities. The Company is concentrating on these two lines of business that it offers to the general public through the internet. The Company is also marketing a simplified issue term life insurance product ("SITLI") to clients such as banks, financial institutions etc., that would offer the product to their account holders (clients) or employees. The SITLI product is not offered to the general public and as of year-end 2001 no SITLI policies had been issued.

The Company, under its new ownership, has adopted a new concept in marketing and distributing its products. It is using its parent's (Inviva's) integrated technology platform that enables customers to immediately purchase and administer a life insurance policy online, in real-time. This system supports all transactions related to purchasing, underwriting and servicing an insurance policy electronically.

The Company has agency agreements with "partners" which consist of insurance agents, brokers, insurance distribution websites, banks, securities brokers, financial planners and other financial services providers, that offer various financial and insurance products on their respective web sites. This provides the Company with a wide range of distribution channels and enables the partners to take advantage of the Company's customer service capabilities that include instant chat, e-mail, and a call center. The partners may also integrate the Company's customer service software with their own existing call centers and systems. In general, potential clients enter one of the partners' websites and select whatever products they are interested in (e.g., life insurance). Potential clients are then provided with a list of insurers that they can choose from, that may include the Company, or in some cases the client is connected directly to the Company's website.

Two partners provided approximately 92% of the Company's new business from its date of acquisition, March 16, 2001, through December 31, 2001. Quotesmith.com Inc. provided approximately 58% and Consec Services, L.L.C. ("Consec"), through its affiliate Consec.com, provided approximately 34% of the Company's new business through their internet websites.

The Company's new annuity product did not sell as well as the Company had anticipated. By year-end 2001, the Company had only sold three annuity contracts, one of which was terminated in January 2002, reducing the Company's new annuity contracts to two.

As of March 11, 2002, the Company ceased issuing policies and contracts in New York State. The Company stated that it wanted to make some adjustments to the policy forms that it had been issuing since its acquisition by Inviva. March 11, 2002, was also the first day of the Company's on-site examination by the Department.

E. Reinsurance

As of December 31, 2001, the Company had reinsurance treaties in effect with ten companies, of which six were authorized or accredited. The Company's life and accident and health business is reinsured on a coinsurance, modified-coinsurance, and yearly renewable term basis. Reinsurance is provided on an automatic basis.

The maximum retention limit for individual life policies issued since the Company was acquired by Inviva is \$200,000. The maximum retention limit for individual life policies issued before March 16, 2001 was \$150,000. The total face amount of life insurance ceded, as of December 31, 2001, was \$239,784,791, which represents 47% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$334,829, was supported by letters of credit.

The transactions listed below were entered into in anticipation and preparation for the sale of the Company by MOA.

1) Effective January 1, 1999, the reinsurance agreement dated December 30, 1988, between MOA and the Company, whereby the Company had assumed a significant portion of its business from MOA, was amended with Department approval, to state that MOA would not cede, and the Company would not assume, any new business under the reinsurance agreement.

2) As of January 2000, MOA assumed (via an assumption reinsurance agreement and related transactions approved by the Department) a substantial portion of the Company's group and individual business. As a result of these transactions, general account assets and reserves totaling \$256.1 million and separate account assets and reserves totaling \$186.6 million were transferred to MOA during 2000.

3) Effective October 1, 2000, all eligible policyholders that had not previously elected to have their contracts assumed by MOA were given the opportunity to have their policies cancelled and rewritten with MOA. As a result, in force general account assets and reserves totaling \$43.7 million and in force separate account assets and reserves totaling \$32.0 million were cancelled as of December 31, 2000 by the Company at the policyholders' request and rewritten by MOA on virtually identical terms and conditions.

4) In January of 2001, the reinsurance agreement dated December 31, 1998, between MOA and the Company was terminated. The effect of the termination was the transfer of \$644 million of policyholder reserves and assets to MOA.

5) The Company and MOA entered into an Indemnity Reinsurance Agreement whereby the Company's variable life, flexible premium annuity and individual retirement annuity business that was not previously assumed by MOA and remained an obligation of the Company, was 100% coinsured with MOA.

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 during the period under review:

	December 31, <u>1996</u>	December 31, <u>2001</u>	Increase <u>(Decrease)</u>
Admitted assets	\$ <u>1,339,346,955</u>	\$ <u>127,062,583</u>	\$ <u>(1,212,284,372)</u>
Liabilities	\$ <u>1,266,951,761</u>	\$ <u>86,910,287</u>	\$ <u>(1,180,041,474)</u>
Common capital stock	\$ 2,502,500	\$ 2,502,500	\$ 0
Gross paid in and contributed surplus	55,143,446	31,549,679	(23,593,767)
Group contingency reserve	3,159,279	0	(3,159,279)
Unassigned funds (surplus)	<u>11,589,969</u>	<u>6,100,117</u>	<u>(5,489,852)</u>
Total capital and surplus	\$ <u>72,395,194</u>	\$ <u>40,152,296</u>	\$ <u>(32,242,898)</u>
Total liabilities, capital and surplus	\$ <u>1,339,346,955</u>	\$ <u>127,062,583</u>	\$ <u>(1,212,284,372)</u>

The significant decrease in assets, liabilities and surplus is the result of the assumption reinsurance agreement with MOA, which was entered into prior to the Company's acquisition by Inviva.

The Company's invested assets as of December 31, 2001, exclusive of Separate Accounts, were mainly comprised of bonds (91.1%) and policy loans (5%).

The Company's entire bond portfolio, as of December 31, 2001, was comprised of investment grade obligations.

The following indicates, for each of the years listed below, the amount of life insurance issued and in force by type (in thousands of dollars):

<u>Year</u>	<u>Individual Whole Life</u>		<u>Individual Term</u>		<u>Group Life</u>	
	<u>Issued</u>	<u>In Force</u>	<u>Issued</u>	<u>In Force</u>	<u>Issued & Increases</u>	<u>In Force</u>
1997	\$85,817	\$631,854	\$ 17,346	\$ 171,631	\$222,461	\$974,477
1998	\$34,773	\$603,486	\$ 16,405	\$ 171,073	\$263,693	\$960,599
1999	\$20,655	\$579,192	\$ 5,077	\$ 159,304	\$218,285	\$907,573
2000	\$18,936	\$547,039	\$ 0	\$ (145,873)	\$ 0	\$ 1,148
2001	\$ 0	\$229,798	\$211,925	\$ 278,367	\$ 0	\$ 0

As of March 16, 2001, the Company has been under new management and has only issued individual term life insurance and variable annuities. The Company is concentrating on these two lines of business that it offers to the general public through the internet. The decreasing amounts in the other lines of business for the period 1997 through 2000, is attributed to the Company's withdrawal from those lines of business in anticipation of the sale of the Company by its former ultimate parent MOA.

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

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Ordinary:					
Life insurance	\$(1,795,396)	\$ 2,140,151	\$(1,326,793)	\$(1,476,135)	\$(5,093,419)
Individual					
Annuities	7,816,317	8,322,891	7,046,291	3,508,727	3,405,662
Supplementary					
Contracts	<u>(462,388)</u>	<u>(1,096,266)</u>	<u>(1,588,097)</u>	<u>142,781</u>	<u>(6,134,845)</u>
Total ordinary	\$ <u>5,558,533</u>	\$ <u>9,366,776</u>	\$ <u>4,131,401</u>	\$ <u>2,175,373</u>	\$ <u>(7,822,602)</u>
Credit life	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>6,141</u>
Group:					
Life	\$ 1,495,700	\$ 2,334,114	\$ 2,026,670	\$(1,035,395)	\$ (18,002)
Annuities	<u>(2,409,363)</u>	<u>(4,289,463)</u>	<u>(2,017,773)</u>	<u>495,613</u>	<u>0</u>
Total group	\$ <u>(913,663)</u>	\$ <u>(1,955,349)</u>	\$ <u>8,897</u>	\$ <u>539,782</u>	\$ <u>(18,002)</u>
Accident and health:					
Group	\$ 2,657,095	\$ 3,252,193	\$ 1,019,378	\$ 1,156,824	\$ 98,913
Other	<u>(49,336)</u>	<u>(33,229)</u>	<u>(34,846)</u>	<u>(52,344)</u>	<u>(54,981)</u>
Total accident And health	\$ <u>2,607,759</u>	\$ <u>3,218,964</u>	\$ <u>984,532</u>	\$ <u>1,104,480</u>	\$ <u>43,932</u>
All other lines	\$ <u>0</u>	\$ <u>0</u>	\$ <u>2</u>	\$ <u>0</u>	\$ <u>0</u>
Total	\$ <u>7,252,629</u>	\$ <u>10,630,391</u>	\$ <u>5,124,828</u>	\$ <u>3,819,635</u>	\$ <u>(7,790,531)</u>

The significant fluctuations in the table above are the result of the assumption reinsurance agreement and related transactions listed in item 3E of this report, which were entered into in anticipation and preparation for the sale of the Company by MOA.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, surplus and other funds as of December 31, 2001, as contained in the Company's 2001 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, 2001 filed annual statement.

A. ASSETS, LIABILITIES, CAPITAL, SURPLUS AND OTHER FUNDS AS OF DECEMBER 31, 2001

Admitted Assets

Bonds	\$109,414,563
Stocks	
Preferred stocks	2,000,000
Policy loans	6,062,915
Cash and short term investments	2,669,640
Reinsurance ceded:	
Amounts recoverable from reinsurers	609,454
Commissions and expense allowances due	10,737
Other amounts receivable under reinsurance contracts	935
Federal and foreign income tax recoverable and interest thereon	1,772,987
Life insurance premiums and annuity considerations	
deferred and uncollected on in force business	1,213,310
Accident and health premiums due and unpaid	3,587
Investment income due and accrued	2,286,140
From Separate Accounts statement	<u>1,018,315</u>
 Total admitted assets	 <u>\$127,062,583</u>

Liabilities, Capital, Surplus and Other Funds

Aggregate reserve for life policies and contracts	\$ 74,359,702
Aggregate reserve for accident and health policies	154,539
Liability for deposit-type contracts	973,767
Policy and contract claims:	
Life	1,552,197
Accident and health	13,997
Premiums and annuity considerations for life and accident and health policies and contracts received in advance	59,987
Policy and contract liabilities:	
Surrender values on canceled policies	(123,611)
Provision for experience rating refunds	(454)
Other amounts payable on reinsurance assumed	998,293
Interest maintenance reserve	1,132,873
Commissions to agents due or accrued	238
Commissions and expense allowances payable on reinsurance assumed	(765)
General expenses due or accrued	61,884
Taxes, licenses and fees due or accrued	(56)
Amounts withheld or retained by company as agent or trustee	427,423
Amounts held for agents' account	(22,385)
Remittances and items not allocated	1,316,360
Miscellaneous liabilities:	
Asset valuation reserve	88,505
Reinsurance in unauthorized companies	110,337
Payable to parent, subsidiaries and affiliates	2,425,550
Payable for securities	6,452
Payable to MOA	2,237,967
Interest on claims	87,540
Miscellaneous	31,632
From Separate Accounts statement	<u>1,018,315</u>
Total liabilities	\$ <u>86,910,287</u>
Common capital stock	\$ 2,502,500
Gross paid in and contributed surplus	31,549,679
Unassigned funds (surplus)	<u>6,100,117</u>
Total capital, surplus and other funds	\$ <u>40,152,296</u>
Total liabilities, capital, surplus and other funds	\$ <u>127,062,583</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Premiums and considerations	\$110,396,427	\$146,375,655	\$104,634,729	\$ 9,622,377	\$ 3,805,163
Investment income	95,846,920	91,825,033	86,622,674	68,446,086	14,830,497
Commissions and reserve adjustments on reinsurance ceded	(2,506,267)	(2,864,348)	(4,001,699)	(446,918,265)	(641,738,386)
Miscellaneous income	<u>216,666</u>	<u>2,210,251</u>	<u>3,303,205</u>	<u>18,031,042</u>	<u>462,913</u>
 Total income	 <u>\$203,953,746</u>	 <u>\$237,546,591</u>	 <u>\$190,558,909</u>	 <u>\$(350,818,760)</u>	 <u>\$(622,639,813)</u>
 Benefit payments	 \$211,622,377	 \$164,424,297	 \$174,472,452	 \$ 196,199,895	 \$ 18,317,362
Increase in reserves	(80,986,557)	16,654,360	(47,025,689)	(354,546,879)	(646,899,183)
Commissions	92,062	58,629	49,273	29,734	96,724
General expenses and taxes	27,309,164	26,966,706	28,322,744	13,546,907	15,771,569
Increase in loading on deferred and uncollected premiums	(16,071)	10,660	(6,212)	(6,685)	(804)
Net transfers to (from) Separate Accounts	37,534,575	23,657,434	29,298,085	(210,402,809)	(319,849)
Miscellaneous deductions	<u>718,378</u>	<u>(173,955)</u>	<u>153,064</u>	<u>(81,127)</u>	<u>0</u>
 Total deductions	 <u>\$196,273,928</u>	 <u>\$231,598,131</u>	 <u>\$185,263,717</u>	 <u>\$(355,260,964)</u>	 <u>\$(613,034,181)</u>
 Net gain (loss)	 \$ 7,679,818	 \$ 5,948,460	 \$ 5,295,192	 \$ 4,442,203	 \$ (9,605,632)
Dividends	147,104	117,184	97,865	(2,660)	0
Federal and foreign income taxes incurred	<u>280,085</u>	<u>(518,812)</u>	<u>72,500</u>	<u>1,704,795</u>	<u>(1,815,101)</u>
Net gain (loss) from operations before net realized capital gains	\$ 7,252,629	\$ 6,350,088	\$ 5,124,827	\$ 2,740,068	\$ (7,790,531)
Net realized capital gains (losses)	<u>(2,013,488)</u>	<u>363,187</u>	<u>362,319</u>	<u>243,065</u>	<u>(15,790,496)</u>
 Net income	 <u>\$ 5,239,141</u>	 <u>\$ 6,713,275</u>	 <u>\$ 5,487,146</u>	 <u>\$ 2,983,133</u>	 <u>\$ (23,581,027)</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Capital and surplus, December 31, prior year	\$ <u>72,395,194</u>	\$ <u>82,484,566</u>	\$ <u>89,869,913</u>	\$ <u>91,411,546</u>	\$ <u>65,201,480</u>
Net income	\$ 5,239,141	\$ 6,713,275	\$ 5,487,146	\$ 2,983,133	\$ (23,581,027)
Change in net unrealized capital gains (losses)	18,521	3,857,310	(2,343,338)	(18,694,705)	17,162,212
Change in non-admitted assets and related items	229,472	264,239	91,806	(621,698)	754,686
Change in liability for reinsurance in unauthorized companies	(155,761)	487,383	(100,552)	118,828	(10,674)
Change in reserve valuation basis	557,518	(115,927)	0	(17,241,355)	0
Change in asset valuation reserve	4,544,799	(3,820,933)	(1,593,429)	7,245,733	4,219,388
Other changes in surplus in Separate Accounts statement	0	0	0	(2)	0
Capital changes:					
Paid in	0	0	0	0	(23,593,767)
Prior year adjustment	<u>(344,318)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus	\$ <u>10,089,372</u>	\$ <u>7,385,347</u>	\$ <u>1,541,633</u>	\$ <u>(26,210,066)</u>	\$ <u>(25,049,182)</u>
Capital and surplus, December 31, current year	\$ <u>82,484,566</u>	\$ <u>89,869,913</u>	\$ <u>91,411,546</u>	\$ <u>65,201,480</u>	\$ <u>40,152,298</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(p) of Department Regulation No. 34-A states, in part:

“. . . An advertisement shall not use a trade name, an insurance group designation, name of the parent company or affiliate of the insurer . . . service mark, slogan, symbol or other device or reference if such use would have the tendency to mislead or deceive as to the true identity of the insurer, or create the impression that someone other than the insurer would have any responsibility for the financial obligation under a policy.”

The Company, through its parent Inviva, stated that it has an advertising agreement with Consecos to advertise the Company's instant term life insurance product on Consecos's affiliated website, Consecos.com. The examiner reviewed the Consecos website and was consistently referred to the "Consecos Instant Term" life insurance product on various pages of the website. The website gave the impression that a "Consecos Instant Term" product was being offered rather than an American Life Insurance Company of New York term life policy. The website has the tendency to mislead prospective policyholders as to the true identity of the insurer and creates the impression that Consecos may be responsible for the financial obligation under the policy.

The Company violated Section 219.4(p) of Department Regulation No. 34-A by using advertisements that are misleading as to the true identity of the insurer.

B. Underwriting and Policy Forms

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

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

“No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law. . . .”

Section 3201(b)(2) of the New York Insurance Law states:

“No policy form shall be issued by a domestic insurer for delivery outside this state unless it has been filed with the superintendent.”

1. The examiner reviewed policy forms used since the acquisition by Inviva. The Company amended a previously approved application form (Form No. 6728-DMAPP-FYT) that consisted of nine questions. The Company used the same form number but added 42 additional questions to the application. This amended application form was not filed with or approved by the Superintendent for use within New York State or filed for use outside of New York State.

In addition, the Company amended a previously approved policy form (Form No. 1-350 21-84, a five-year term policy) by extending the renewable term for coverage to age 80. The policy form was approved under four conditions, one of which stated that the policy and rider would not extend beyond age 70. This amended policy form was not filed with or approved by the Superintendent for use within New York State or filed for use outside of New York State.

The Company issued 101 of the applications and policy forms that were not filed and approved for use in New York State and 414 of the applications and policy forms that were not filed for use outside of New York State.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using applications and policy forms in New York State that were not filed with and approved by the Superintendent.

The Company violated Section 3201(b)(2) of the New York Insurance Law by using applications and policy forms that were not filed with the Superintendent for use outside of New York State.

2. When the applicant applies for a 10-year or 20-year term policy, the Company initially issues a 90-day guaranteed term life insurance policy once the Company collects the initial premium and the applicant responds appropriately to the questions on the application. During the next 90-days the Company investigates the information provided by the policyholder and performs other tests required by its underwriting policies and procedures. Once the Company completes its underwriting procedures the policyholder then receives the term policy for which he or she had applied. The 10-year or 20-year term policy has the same commencement date as the 90-day guaranteed term life policy.

The 90-day guaranteed term life insurance policy was not filed with and approved by the Superintendent for use within New York State and it was not filed with the Superintendent for use outside of New York State.

The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing policy forms in New York State that were not filed with and approved by the Superintendent.

The Company violated Section 3201(b)(2) of the New York Insurance Law by issuing policy forms that were not filed with the Superintendent for use outside of New York State.

The 90-day guaranteed term life insurance policy has been determined to be a temporary insurance agreement. Section 52.53 of Department Regulation No. 62 provides guidelines for temporary insurance agreements.

Section 52.53(i) of Department Regulation No. 62 states:

“If a policy is not issued within the time specified in the conditional receipt or interim insurance agreement, the application shall be deemed rejected and refund of all premiums shall be made.”

The Company declined 225 applicants, 34 from New York State, for term life policies as of December 31, 2001. The Company did not refund the initial premiums paid by these applicants after they were declined.

The Company violated Section 52.53(i) of Department Regulation No. 62 for failing to refund premiums to declined applicants.

The examiner recommends that the Company refund the premiums to all applicants it declined, with interest.

3. The Company requires each applicant/policyholder that applies online for its products to agree to open an online account. The terms and conditions for the updating and maintenance of the online account are contained in the “Terms of Service: Life Product” agreement that is part of the term policy.

The “Terms of Service: Life Product” agreement states, in part:

“Electronic Delivery of Information

I agree that all documents relating to my term life insurance policy will be provided to me electronically--via my online account with The American Life Insurance Company of New York (‘American Life’) and via email. I also agree to undertake all policy maintenance electronically once I have been issued my policy. All my insurance documents and other necessary information will be stored for me by American Life in my secure online account . . .

If after purchasing a policy from American Life I decide that I wish to revoke my consent to receive all records electronically, I may do so by visiting the American Life website and notifying customer service. This will constitute a request to surrender my policy with American Life. There is no fee or charge to surrender my policy. . . .”

As a result, if a policyholder for any reason is unable to continue “all policy maintenance electronically”, the policyholder is required to surrender his or her policy.

The Company did not file the “Terms of Service: Life Product” agreement for approval by the Superintendent for use in New York State and it did not file it with the Superintendent for use outside of New York State.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using the “Terms of Service: Life Product” agreement which is not filed and approved by the Superintendent for use in New York State.

The Company violated Section 3201(b)(2) of the New York Insurance Law by using the “Terms of Service: Life Product” agreement which it did not file with the Superintendent for use outside of New York State.

In addition, Department Circular Letter No. 33 (1999), which gives guidance to the insurance industry with respect to the Electronic Signatures and Records Act (“the Act”) as part of the State Technology Law, advises, in part:

“ . . . Insurers should be aware that Section 109 of the Act provides that the use of electronic records and signatures is voluntary and that ‘ . . . [n]othing in this article shall require any entity or person to use an electronic record or an electronic signature unless otherwise provided by law.’ Thus, if any one party to the transaction does not wish, or is not able, to participate fully in an electronic transaction, such party cannot be required to do so. . . . ”

The “Terms of Service: Life Product” agreement requires policyholders that are unable to continue “all policy maintenance electronically” to surrender their policy. This requirement is contrary to Department Circular Letter No. 33 (1999) with respect to the Act as part of the State Technology Law.

Furthermore, Section 421.2 of Department Regulation No. 173 states:

“Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.”

Section 421.3 of Department Regulation No. 173 states:

“A licensee’s information security program shall be designed to:

- (a) Ensure the security and confidentiality of customer information;
- (b) Protect against any anticipated threats or hazards to the security or integrity of such information; and
- (c) Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.”

The “Terms of Service: Life Product” agreement states, in part:

“Password and Security

I am responsible for maintaining the confidentiality and use of my password(s) and other personal information. American Life is not liable if my password(s) are obtained by others, **or if information is otherwise intercepted by others**. I will immediately notify American Life if there is unauthorized use of my password or other personal information.

Transactions

I will be solely responsible for all orders, data, information or requests transmitted using my password. I will immediately notify American Life if there is a discrepancy with my account or policy. If I fail to notify American Life of any discrepancy, neither American Life nor any of its employees, agents, affiliates, subsidiaries, owners, or any third parties, will have any responsibility or liability

to me or to any other person for any claims with respect to the handling, mishandling, or loss of any order. . . .”

(emphasis added)

The Company violated Sections 421.2 and 421.3 of Department Regulation No. 173 by attempting to transfer the responsibility to safeguard and protect against unauthorized use of information that could cause harm or inconvenience to the consumer/policyholder from the Company to the consumer/policyholder.

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.

The prior report on examination contained two recommendations regarding the treatment of long-term disability policyholders.

1. Recommendation “H” of the prior report on examination states:

“The examiner recommended that the Company periodically review its group long-term disability policies to determine changes in claimants’ status with regard to Social Security benefits.”

The Company did not comply with this recommendation during the examination period.

The examiner again recommends that the Company periodically review its group long-term disability policies to determine changes in claimants’ status with regard to Social Security benefits.

2. Recommendation “I” of the prior report on examination states:

“The examiner recommended that the Company notify all group long-term disability certificateholders of the Company’s claims paying procedures with regard to the coordination of Social Security benefits.”

The Company did not comply with this recommendation during the examination period.

The examiner again recommends that the Company notify all group long-term disability

certificateholders of the Company's claims paying procedures with regard to the coordination of Social Security benefits.

D. Response to Supplement No. 1 to Department Circular Letter No. 19 (2000)

Supplement No. 1 to Circular Letter No. 19 (2000) (the "Supplement"), issued by the Department on June 22, 2000, notified all licensed life insurers that the Department was investigating allegations of race-based underwriting of life insurance by its licensees. The Supplement directed, pursuant to Section 308 of the New York Insurance Law, each domestic and foreign life insurer to review its past and present underwriting practices regarding race-based underwriting and to report its findings to the Department, no later than August 15, 2000.

On August 11, 2000, pursuant to Section 308 of the New York Insurance Law, the Company submitted in a timely manner, a report of the findings of its review of past and present underwriting practices regarding race-based underwriting made in accordance with the requirements of the Supplement.

The report, submitted by the Company, stated that "it has not engaged in, and does not now engage in, race-based underwriting."

An analysis of the Company's response to the Supplement and other factors indicated that the Company's review of its past and present underwriting practices complied with the requirements of the Supplement.

7. DEPARTMENT REGULATION NO. 33

Section 90.7(a) of Department Regulation No. 33 states, in part:

“General expense items must be itemized and entered in sufficient detail to indicate their precise nature . . .

(3) Whenever personnel or facilities are used in common by two or more companies, or whenever the personnel or facilities of one company are used in the activities of two or more companies, each company shall assign its share of the expense to the same expense classification as if it had incurred the entire expense. . . .”

The Company reported expenses for the services provided to it by its parent, Inviva, in a lump sum entitled “Management Fees” in Exhibit 5 of the 2001 filed annual statement. The Company did not itemize the expenses or enter the expenses in sufficient detail to indicate their precise nature as required by Department Regulation No. 33. The Company filed an amended Exhibit 5 on May 10, 2002.

The Company violated Section 90.7(a) of Department Regulation No. 33 when it failed to itemize its expenses in sufficient detail to indicate their precise nature.

Section 91.4(a)(2) of Department Regulation No. 33 states, in part:

“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 . . .”

The Company was unable to provide the basis or methodology for the allocation of expenses charged to it by Inviva and there were no time studies available to document the charges.

The Company violated Section 91.4(a)(2) of Department Regulation No. 33 when it failed to provide records that showed the basis for the allocation of expenses.

8. 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 219.4(p) of Department Regulation No. 34-A by not identifying the name of the city in which the Company has its home office.</p> <p>The Company, since its acquisition by Inviva, uses its new address in its advertising.</p>
B	<p>The Company's underwriting files failed to reflect, in several instances, an insurable interest between the insured minor and the policyholder. A small number of other cases failed to reflect the relationship or dependency of the insured minor to the policyholder. Several policy underwriting files failed to show the amount of insurance in force on the policyholder which resulted in the examiners being unable to determine compliance with the limitations of Section 3207 of the New York Insurance Law.</p> <p>The Company has not accepted juvenile insurance business since March 16, 2001.</p>
C	<p>The examiner recommended that the Company amend its underwriting procedures and controls to assure that individual life policies are not issued on the lives of minors in excess of the limits imposed by Section 3207 of the New York Insurance Law.</p> <p>The Company has not accepted juvenile insurance business since March 16, 2001.</p>
D	<p>The Company violated Section 2611(b)(4) and (5) of the New York Insurance Law by utilizing an outside vendor's HIV test consent form which did not contain a statement that the results of an adverse blood test may be disclosed to a person identified by the proposed insured and also did not provide the department of health's toll free telephone number.</p> <p>The Company now uses its own HIV test consent form that is in compliance with Section 2611 of the New York Insurance Law.</p>

<u>Item</u>	<u>Description</u>
E	<p>The Company violated Section 51.5(a)(2) of Department Regulation No. 60 by issuing a policy without a statement signed by the applicant as to whether such insurance is replacing existing life insurance.</p> <p>The Company has not accepted replacement business since March 16, 2001.</p>
F	<p>The Company violated Section 51.5(a)(2) of Department Regulation No. 60 by not requiring a statement signed by the agent as to whether, to the best of his knowledge, replacement is involved in the transaction.</p> <p>The Company has not accepted replacement business since March 16, 2001.</p>
G	<p>The examiner recommended that the Company maintain adequate documentation in its annuity death claim files in order to verify the claim payments.</p> <p>The sample of annuity death claims reviewed contained adequate documentation.</p>
H	<p>The examiner recommended that the Company periodically review its group long-term disability policies to determine changes in claimants' status with regard to Social Security benefits.</p> <p>The Company did not comply with this recommendation during the examination period. This recommendation is repeated in the current report on examination.</p>
I	<p>The examiner recommended that the Company notify all group long-term disability certificateholders of the Company's claims paying procedures with regard to the coordination of Social Security benefits.</p> <p>The Company did not comply with this recommendation during the examination period. This recommendation is repeated in the current report on examination.</p>
J	<p>The Company violated Section 4233(b) of the New York Insurance Law by not reporting in its annual statement 14 vendors that received in excess of \$60,000.</p> <p>The Company now reports payments in excess of \$60,000 in its annual statement as required by Section 4233(b).</p>

<u>Item</u>	<u>Description</u>
K	<p>The examiner recommended that the Company initiate action which would result in the ability to fully reconcile the amounts reported in its annual statement with the corresponding amount in its Separate Account annual statement.</p> <p>The Company had three annuities in its Separate Accounts that amounted to \$1,018,315 as of December 31, 2001. This amount was reconciled to its 2001 annual statement and no discrepancies were noted.</p>
L	<p>The examiner recommended that the Company take greater care in preparing Schedule Q.</p> <p>The business referred to in the recommendation above is no longer with the Company.</p>
M	<p>The examiner recommended that the Company maintain records so that amounts reported in its annual statements for outstanding and paid claims can be traced back to the policy giving rise to the claim.</p> <p>The examiner was able to trace the amount in the annual statement for outstanding and paid claims back to the policy that gave rise to the claim.</p>

9. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 219.4(p) of Department Regulation No. 34-A by using advertisements that are misleading as to the true identity of the insurer.	19
B	The Company violated Section 3201(b)(1) of the New York Insurance Law by using application forms and policy forms (Form Nos. 6728-DMAPP-FYT and 1-350 21-84) in New York State that were not filed with and approved by the Superintendent.	20
C	The Company violated Section 3201(b)(2) of the New York Insurance Law by using application forms and policy forms (Form Nos. 6728-DMAPP-FYT and 1-350 21-84) outside of New York State that were not filed with the Superintendent.	20
D	The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing policy forms (90-day guaranteed term life) in New York State that were not filed with and approved by the Superintendent.	21
E	The Company violated Section 3201(b)(2) of the New York Insurance Law by issuing policy forms (90-day guaranteed term life) that were not filed with the Superintendent for use outside of New York State.	21
F	The Company violated Section 52.53(i) of Department Regulation No. 62 for failing to refund premiums to declined applicants.	21
G	The examiner recommends that the Company refund the premiums to all applicants it declined, with interest.	21

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The Company violated Section 3201(b)(1) of the New York Insurance Law by using the “Terms of Service: Life Product” agreement which is not filed and approved by the Superintendent for use in New York State.	22
I	The Company violated Section 3201(b)(2) of the New York Insurance Law by using the “Terms of Service: Life Product” agreement which it did not file with the Superintendent for use outside of New York State.	22
J	The Company’s requirement for policyholders to continue all policy maintenance electronically or surrender their policy is contrary to Department Circular Letter No. 33 (1999) with respect to the Electronic Signatures and Records Act as part of the State Technology Law.	22 – 23
K	The Company violated Sections 421.2 and 421.3 of Department Regulation No. 173 by transferring the Company’s responsibility to safeguard and protect against unauthorized use of information that could cause harm to the consumer, to the policyholder.	23 – 24
L	The examiner again recommends that the Company periodically review its group long-term disability policies to determine changes in claimants’ status with regard to Social Security benefits.	24
M	The examiner again recommends that the Company notify all group long-term disability certificateholders of the Company’s claims paying procedures with regard to the coordination of Social Security benefits.	24 – 25
N	The Company violated Section 90.7(a)(3) of Department Regulation No. 33 when it failed to itemize expenses or enter expenses in sufficient detail to indicate their precise nature.	26
O	The Company violated Section 91.4(a)(2) of Department Regulation No. 33 when it failed to provide records and/or time studies that showed the basis for the allocation of expenses.	26

APPOINTMENT NO. 21820

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

ANTHONY CHIAREL

as a proper person to examine into the affairs of the

AMERICAN 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 25th day of January, 2002



GREGORY V. SERIO

Superintendent of Insurance

A handwritten signature in dark ink, appearing to read "Gregory V. Serio", written over a horizontal line.

Superintendent